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LEGAL DEFINITIONS of

A COLLECTION OF WORDS AND PHRASES AS APPLIED AND DEFINED BY THE COURTS, LEXICOGRAPHERS AND AUTHORS OF BOOKS ON LEGAL SUBJECTS

BENJAMIN W. POPE

OF THE PERRY COUNTY (ILLINOIS) BAR

IN TWO VOLUMES

VOLUME I

CHICAGO
CALLAGHAN AND COMPANY
1919

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BY
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Bedication

TO THE MEMORY OF MY MOTHER, WHOSE LOVE AND DEVOTION KNEW NO ENDING SAVE IN DEATH: TO MY SISTER, PLAYMATE OF MY CHILDHOOD, COMPANION OF MY YOUTH, LOVING AND DEVOTED FRIEND OF MATURER YEARS: AND TO THE HON. GEORGE W. WALL, MY FIRST INSTRUCTOR IN THE LAW, AN IDEAL JUDGE AND ONE OF NATURE'S NOBLEMEN—THESE PAGES ARE AFFECTIONATELY AND GRATEFULLY DEDICATED.

ANNOUNCEMENT

Nothing is more important to the practicing lawyer than to be able to ascertain at once the correct meaning of words and phrases. This necessity enters into his daily life. His contracts, pleadings, instructions and statutes are composed of words and phrases and his procedure must be dictated by their proper interpretation. Ordinary lexicographers are of but little assistance in the legal definition of words or phrases. For instance, the word "shall" is of ordinary use among laymen, and its meaning from the layman's standpoint universally understood. To the lawyer, however, it becomes a word of divergent meanings—sometimes a word of mandatory significance and at other times directory merely. Ordinary dictionaries afford little aid.

As was said in Hills v. London Gaslight Co., 27 L. J. Ex. 63, "Is not the judge bound to know the meaning of all words used in the English language; or if any are used technically or scientifically, to inform his own mind by evidence, and then to determine the meaning?"

Again, a word may be one thing when spoken and an entirely different word when written, as was pointed out over a hundred years ago by Lord Holt in Reg. v. Drake (1706), 3 Salkeld 225.

In the work here presented Judge Pope has endeavored to collect all of the legal definitions and applications of words and phrases so far as they have come before the courts of Illinois. Owing to the fact that no one state could completely cover the field he has as far as possible where Illinois decisions were lacking extended his research beyond the state and selected a great number of important decisions from other states. Particularly he has endeavored to exhaust the English cases so far as they are of value to the American lawyer, thus presenting hundreds of cases otherwise inaccessible.

The work has required years of painstaking effort, and is submitted to the profession with the utmost confidence by the Publishers.

CALLAGHAN & COMPANY.

CHICAGO, MARCH, 1919.

Pope's Legal Definitions

A. D. 19.

Information—Makes Charge Uncertain in Time.

An information alleging that the offense was committed on the 30th day of April, "A. D. 19," is uncertain as to time, the date set forth being impossible. People v. Wagner, 172 Ill. App. 86.

A. D. 190.

Information-States Impossible Date.

An information alleging that the offense charged was committed on the 4th day of August "A. D. 190," is uncertain as to time, the year "190" being impossible, and it not being inferable with any certainty what figure, from 0 to 9, had been inadvertently omitted. People v. Weiss, 168 Ill. App. 504.

A WORD TO THE WISE IS SUFFICIENT.

Libel.

A letter to one dealing with another in business, stating that such other is not legally responsible, being a minor, and adding "a word to the wise is sufficient," conveys, by the quoted expression, the idea that such other person was also wanting in honor and integrity as a business man, and that those who should deal with him would suffer loss. Hays v. Mather, 15 Ill. App. 34.

ABANDON.

Criminal Code-"Desert" Synonymous.

The word "abandon," used in section 2 of the act of 1887, now section 2 of the act of 1903 (J. & A. 3431), is used as synonymous with the word "desert." Virtue v. People, 122 Ill. App. 224.

ABANDONMENT.

Of Property—Elements.

To constitute an abandonment of property there must be not only an actual relinquishment of the property, but an intention to abandon it. Chicago & E. I. R. Co. v. Clapp, 201 Ill. 425; Brink's, etc., Co. v. Hunter, 156 Ill. App. 539.

ABBREVIATIONS.

"A."

The letter "a," when used in a note, is known and recognized by commercial people as standing for the word "at." Belford v. Beatty, 145 Ill. 418.

"Ads."

The letters 'ads." are an abbreviation for "ad sectam." Bowen v. Wilcox, etc., Co., 86 Ill. 12.

"Ass'n."

The abbreviation "ass'n" for "association" is in common use and well understood. Condon v. Bruse, 58 Ill. App. 255.

"Bk."

The letters "bk.," used in a tax advertisement, are an abbreviation for "block." Jackson v. Cummings, 15 Ill. 453.

"Br."

The letters "br." are an abbreviation for "branch." West Chicago S. R. Co. v. People, 155 Ill. 304.

"C"-"Ct"-"Cts."

The letters "c," "ct," and "cts." are abbreviations for "cent" or "cents." Jackson v. Cumings, 15 Ill. 453.

"Chicago W. Div. R. R. Co."

The expression "Chicago W. Div. R. R. Co.," used in an assessment roll to designate the name of a corporation, is an

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abbreviation for "Chicago West Division Railway Company." West Chicago S. R. Co. v. People, 155 Ill. 304.

"Citz."

The letters "citz." are an abbreviation for "citizen." West Chicago S. R. Co. v. People, 155 Ill. 304.

"Co."

The letters "Co.," when used as part of the name of a commercial firm, are a well understood abbreviation for "company." West Chicago S. R. Co. v. People, 155 Ill. 304; Keith v. Sturges, 51 Ill. 143.

"Com."

The letters "Com.," when used as part of the name of a commercial firm, are a well understood abbreviation for "company." Keith v. Sturges, 51 Ill. 143.

"D."

The letter "d.," used in an abstract of title, may be shown by parol to be an abbreviation for "deed." Converse v. Wead, 142 Ill. 187.

"Div."

The letters "div." are an abbreviation for "division." West Chicago S. R. Co. v. People, 155 Ill. 304.

448.77

The sign "\$" means "dollar." Jackson v. Cummings, 15 Ill. 453.

"Dolls. Cts."

The letters "Dolls. Cts.," used in an assessment roll, are properly taken as indicating "dollars and cents." Linck v. Litchfield, 141 Ill. 481.

"E. ½ S. W. ½ (W. of Little Calumet Riv.)"

The letters and figures "E. ½ S. W. ¼ (W. of Little Calumet Riv.)," used in an abstract of title, may be shown by parol to indicate the description of the property. Converse v. Wead, 142 Ill. 137.

"E. W. 1/2 S."

The letters and figures "E. W. ½ S.," | may be shown by parol to mean "used in describing a highway in a com- | Converse v. Wead, 142 Ill. 137.

plaint for obstructing it, may be reasonably construed to mean "east and west halves of section." Kile v. Yellowhead, 80 Ill. 211.

"Feb'y."

There is no variance between a declaration declaring on a note dated in "February" and a note dated in "Feb'y." Cutting v. Conklin, 28 Ill. 508.

"F. O. B. Cars at Said Mine."

The expression "f. o. b. cars at said mine," used in a contract, means "free on board the cars at the mine." Consolidated, etc., Co. v. Jones, etc., Co., 120 Ill. App. 150.

"Frm."

The letters "frm," used in describing land in a tax title proceeding, are an abbreviation of "from." Blakeley v. Bestor, 13 Ill. 714.

"Ft."

The letters "ft.," used in describing land in a tax title proceeding, are an abbreviation for "feet." Blakeley v. Bestor, 13 Ill. 714.

"Ill. C. R. R. Co."

The letters "Ill. C. R. R. Co.," appearing in an abstract of title, may be shown by parol to mean "Illinois Central Railroad Company." Converse v. Wead, 142 Ill. 137.

Initial Letter of Christian Name.

The initial letter of the christian name of a person is an abbreviation of such name. Illinois C. R. Co. v. Hasenwinkle, 232 Ill. 228.

"Int."

The letters "int.," when used in a note, are an abbreviation of the word "interest." Belford v. Beatty, 145 Ill. 418.

"Jeg."

The letters "Jas.," appearing in an abstract of title as part of a person's name, may be shown by parol to mean "James." Converse v. Wead, 142 Ill. 137.

"Jos."

The letters "Jos." are a common abbreviation for "Joseph." Feld v. Loftis, 240 Ill. 110.

"J. P."

The letters "J. P." are an abbreviation for "justice of the peace." Rowley v. Berrian, 12 Ill. 200; Livingston v. Kettelle, 6 Ill. 119; Shattuck v. People, 5 Ill. 481.

"Jr."

The letters "Jr." are an abbreviation for "Junior." Davids v. People, 192 Ill. 184.

"L. S."

The letters "L. S.," following the name of a notary in a certificate of acknowledgment, indicate an official seal. Bucklen v. Hasterlik, 155 Ill. 431.

"Lt."

The letters "lt.," used in a tax advertisement, are an abbreviation for "lot." Jackson v. Cummings, 15 Ill. 453.

"M."

The letter "m.," used in a tax advertisement, with reference to the amount due, is an abbreviation for "mills." Jackson v. Cummings, 15 Ill. 453.

"Mfg."

The letters "mfg." are an abbreviation for "manufacturing." Seiberling v. Miller, 207 Ill. 449.

"N. P."

The letters "N. P." are an abbreviation for "notary public." Rowley v. Berrian, 12 Ill. 200.

"O. K."

"O. K." means "all correct." Davis, etc., Co. v. Metsger, etc., Co., 90 Ill. App. 117.

"P. A."

The letters "p. a.," used in a note in connection with interest, are an abbreviation for "per annum." Belford v. Beatty, 145 Ill. 418.

"Pe. Cen."

The expression "pe. cen.," in a promissory note, is an abbreviation for "per cent." Gramer v. Joder, 65 Ill. 315.

"Pt."

The letters "pt.," used in a tax advertisement, are an abbreviation for "part." Jackson v. Cummings, 15 Ill. 458; Blakeley v. Bestor, 13 Ill. 714.

"R. R."

The letters "R. R." are a well known abbreviation for "railroad." West Chicago S. R. Co. v. People, 155 Ill. 304.

"Sec."

The letters "sec.," used as descriptive of land in a report of commissioners estimating the cost of an improvement, are an abbreviation for "section." McChesney v. Chicago, 173 Ill. 77.

"6%."

The sign "6%," when used in a note with reference to interest, is a per cent mark, standing for "six per cent." Belford v. Beatty, 145 Ill. 418.

"Treas."

"Treas." is an abbreviation for "treasurer." Miers v. Coates, 57 Ill. App. 220.

"2/4-2/6."

The dates of the items charged for in an account filed in a mechanic's lien proceeding are sufficiently indicated where under the heading "Chicago, February 15, 1893" the figures "2/4" and "2/6" are placed in the date column. Sorg v. Crandall, 233 Ill. 88.

"Tx."

The letters "tx," used in a tax advertisement, are an abbreviation for "tax." Jackson v. Cummings, 15 Ill. 453.

"V."

The letter "v" is an abbreviation for "versus." Bowen v. Wilcox, etc., Co., 86 Ill. 12.

"Vl."

The letters "vl," used in a tax advertisement, are an abbreviation for "valuation." Jackson v. Cummings, 15 Ill. 453.

~W.~

The letter "w," when used as an abbreviation, stands for "west." West Chicago S. R. Co. v. People, 155 Ill. 304; Taylor v. Wright, 121 Ill. 462.

"W. D."

The letters "W. D." used by an applicant for fire insurance in answer to a question in the application as to the title by which applicant held the insured property have no fixed and definite meaning in the law or in common use as an abbreviation for "warranty deed." Rockford Ins. Co. v. Nelson, 65 Ill. 419.

"W. ½ of N.W; Sec. 15; Town 87 N; Range 13 E."

The letters and figures, "W. ½ of N.W; Sec. 15; Town 37 N; Range, 13 E.," used in receipts given for the payment of taxes, are properly shown by parol to mean "west half of northwest quarter of section 15, in township 27 north, range thirteen east." Paris v. Lewis, 85 Ill. 601.

ARIDE BY THE ISSUE.

Stipulation—Refers to Ultimate Result or End.

Where several cases involving the same issues are pending, and a stipulation is made that one shall be tried and that in another named case parties shall "abide by the issue" of the first named case, the stipulation means that parties shall abide the ultimate result or end of the case stipulated to be tried. Niagara, etc. Co. v. Scammon, 35 Ill. App. 586.

ABIDE THE EVENT.

Stipulation-Means Final Outcome.

A stipulation by counsel that succeeding cases shall "abide the event" of a named case in that and other courts means that such cases shall abide the final outcome and end of the litigation and that the side finally successful in one should be successful in all. Commercial, etc., Co. v. Scammon, 35 Ill. App. 660.

ABLE-BODIED MEN.

Roads and Bridges Act.

The jury may properly find a man to be within the meaning of the expression "able-bodied men," used in section 60 of the act of 1877 (J. & A. 9819), relating to the assessment of poll taxes for highway purposes where it appears that such person was ordinarily able to do the work usually performed by able bodied men on the public roads, although slightly lame from the effects of a wound in the leg received during the Civil war. Sherrick v. Houston, 29 Ill. App. 382.

ABODE.

The place where a person dwells. Dorsey v. Brigham, 177 Ill. 264.

Inheritance Tax Acts—When "Domicfl," "Residence" Synonymous.

The terms "residence," "abode," "domicil," and kindred terms, although differing in meaning, are synonymous when used in statutes similar to the Inheritance Tax Act (J. & A. 9597 et. seq.). People v. Estate of Moir, 207 Ill. 188.

ABOUT.

In contiguity or proximity to; not far from; in connection with; nigh; near; in concern with; engaged in; dealing with; occupied upon. Dueber, etc., Co. v. Young, 155 Ill. 228.

Nearly; approximately; in close correspondence to; in the immediate neighborhood of. Ryan v. Desmond, 118 Ill. App. 190.

Attachment Act—Implies Fraudulent Intent.

The word "about," used in subdivision 8 of section 1 of the Attachment Act (J. & A. 492), authorizing an attachment when the debtor is "about fraudulently to conceal, assign, or otherwise dispose of his property," etc., implies a fraudulent intent on the part of the debtor, who cannot be said to be "about" fraudulently to conceal, etc., unless he has formed a

purpose or design to do so. Dueber, etc., Co. v. Young, 155 Ill. 228.

Relative Term.

The word "about" gives a margin for a moderate excess in or diminution of the quantity mentioned and negatives the idea that exact precision is intended, imports in that the actual quantity is a near approximation to that mentioned, and when the context limits and restrains its meaning, does not materially impair the certainty of a description. Peoria & P. U. Ry. Co. v. People, 198 Ill. 325.

As Approximate Determination.

The term "about" determines approximately size, quantity or time. Ryan v. Desmond, 118 Ill. App. 190.

ABOUT FIFTY WORKING DAYS.

Contract—Implies Reasonable Extension of Time.

A contract providing that plaintiff should construct a chimney for defendant in "about fifty working days," and that delivery within the time named is contingent on causes of delay beyond the control of plaintiff, entitles plaintiff to a reasonable extension of the period depending on causes which may excuse such delay and does not limit him to exactly fifty days in which to perform. Weber, etc., Co. v. Brunswick, etc., Co., 195 Ill. App. 12.

ABSENT.

As Adjective.

Not present; withdrawn from or not present in a place; being away; not present; not at one's domicile or usual place of business. Wheeler v. Wheeler, 134 Ill. 530.

Temporary Condition—Implies Probability of Return.

The word "absent" conveys the idea of a temporary condition; a cessation of; and probability or possibility of returning, presence. Wheeler v. Wheeler, 35 Ill. App. 124.

ABSENT FROM THE STATE.

Wills Act of 1847—Refers to Sometime Residents.

The expression, "absent from the state," is used in section 7 of the Wills Act of 1874, refers to persons who have been present in the state, and does not include persons who have always been non-residents. Wheeler v. Wheeler, 35 111. 124.

ABSENTS.

Verb.

To withdraw or go away from a place. Wheeler v. Wheeler, 134 Ill. 530.

ABSOLUTE.

Deed-Implies Title Vesting Presently.

A deed in the nature of a voluntary settlement reserving a life estate in the grantors and providing that the title shall not become "absolute" in the grantees till the death of the grantors implies, by the word "absolute," that the grantees were to take a title presently, but that such title should not become perfect till the event named, and does not postpone the vesting of any title till such event. White v. Willard, 232 Ill. 472.

Grant-"Unqualified" Compared.

The word "absolute," when used in a grant or gift of property, does not always convey a fee, its meaning as so used being determined by the context, so that it may be used in connection with an interest in property without being regarded as the equivalent of "unqualifiedly." Truax v. Gregory, 196 Ill. 87.

ABSOLUTE TITLE IN FEE SIMPLE.

As Applied to Real Estate.

The absolute title to real estate is the highest degree of right or interest therein. Ward v. Luneen, 25 Ill. App. 163.

ABSOLUTELY AND UNCONDITIONALLY.

Will.

A will devising property to a widow during widowhood "absolutely and un-

conditionally" means without condition during the time the devisee holds it. Kratz v. Kratz, 189 Ill. 280.

ABSORBED.

Insurance—Refers to Imbibing Through Pores of Skin.

The word "absorbed," used in exceptions contained in life insurance policies, with reference to poisons, gases and the like, has reference to the process of absorption by sucking up or imbibing through the pores of the body. Fidelity, etc., Co. v. Waterman, 161 Ill. 635.

ABSTRACT.

A writing purporting to be a copy or synopsis of facts shown by the records. Bucklen v. Hasterlik, 155 Ill. 431.

As Applied to Land.

The word "abstract," as used in relation to land, is commonly understood to mean a writing in which is set forth the chain of the record title, and containing all matters of record affecting the title, and necessary to be considered in determining in whom the record title was at the date of the abstract. Curtis v. Hawley, 85 Ill. App. 436.

ABSTRACT OF TITLE.

A summary or epitome of the facts relied on as evidence of title, containing a note of all conveyances, transfers or other facts relied on as evidence of the claimant's title, together with all such facts appearing of record as may impair the title. Geithman v. Eichler, 265 Ill. 587; Atteberry v. Blair, 244 Ill. 369; Heinsen v. Lamb, 117 Ill. 556.

A statement, in substance, of what appears on the public records affecting the title to the property. Union, etc., Co. v. Chisholm, 33 Ill. App. 649. To a similar effect see Chase v. Heaney, 70 Ill. 271.

ABUSE OF DISCRETION.

Implies Improper Exercise.

The term "abuse of discretion" means not only the decision of a case arbitrarily,

by whim or caprice, or from a bad motive, but also that the discretion has not been justly or properly exercised under the circumstances of the case. People v. Pfanschmidt, 262 Ill. 441. To a similar effect see Bonney v. King, 103 Ill. App. 604; Jeffery v. Robbins, 73 Ill. App. 361.

ABUSED.

Process.

Process is "abused" when employed to accomplish some purpose which the process was not intended by law to effect, or where used in the mode and manner designed by law, but with an ulterior purpose to effectuate some unlawful collateral end, the legal use of it being but ostensible, while the real design was to pervert its force and efficiency to the success of the unlawful collateral design. Phoenix, etc., Co. v. Arbuckle, 52 Ill. App. 38.

ABUT.

Chicago B. & Q. R. Co. v. Park Commissioners, 11 Ill. App. 564.

"Adjoin"—Compared.

In the old law the ends were said to "abut," the sides to "adjoin." Chicago B. & Q. R. Co. v. South Park Commissioners, 11 Ill. App. 564. To the same effect Springfield v. Green, 120 Ill. 274.

When Synonymous With "Adjoin."

Although the words "abut" and "adjoin" are not strictly synonymous, yet they are often used in the same sense, and indiscriminately. Springfield v. Green, 120 Ill. 275.

Contract Not Implied.

The word "abutting" does not necessarily imply that the things spoken of are in contact. People v. Willison, 237 Ill. 591.

Ordinance—Used in Sense of "Adjoin."

An ordinance providing that the cost of paving streets shall be assessed on the

real estate "abutting" such streets, it is intended to include, by the word "abutting," lots whose sides are bounded by such streets as well as those whose ends touch them, so that lots whose sides are bounded by one of the streets paved, and whose ends touch another of such streets, are subject to assessment on both streets. Springfield v. Green, 120 Ill. 275. See also People v. Willison, 237 Ill. 591 (citing Springfield v. Green, supra, with approval).

Special Assessment—Inapplicable to Intangible Things.

Intangible things, such as the right of way of occupancy, franchises, property and interests of a railroad company are not property "abutting" on a street within the meaning of section 2 of the act of 1879 (J. & A. 8080), relative to the improvement of streets leading to public parks. South Park Commissioners v. Chicago B. & Q. R. Co., 107 Ill. 108.

ACCELERATED.

Remainder.

A remainder is not "accelerated," although the first taker cannot or will not take, where the intention of the testator is that the remainder should not take effect till the expiration of the life of the prior donee. Fowler v. Samuel, 257 Ill. 34; Slocum v. Hagaman, 176 Ill. 539.

A remainder is said to be "accelerated" when the first taker is incapable to take or refuse to take. Mills v. Newberry, 112 Ill. 130; Blatchford v. Newberry, 99 Ill. 47. To the same effect see Fowler v. Samuel, 257 Ill. 34.

ACCELERATION.

An estate is said to be accelerated when it is reduced to possession by the extinguishment of the precedent estate sooner than it would have been in the due course of events.

ACCEPTANCE.

Bill of Exchange.

An engagement to pay the bill in money when due. 4 East 72; 19 Law J. 297.

The act by which the drawee evinces his consent to comply with and be bound by the request contained in the bill of exchange directed to him. Ray v. Faulkner, 73 Ill. 472.

Acceptances of bills of exchange are:

- (1) Absolute, being a positive engagement to pay the bill according to its tenor.
- (2) Conditional, being an undertaking to pay the bill on a contingency.
- (3) Partial, being one varying from the tenor of the bill.
- (4) Qualified, being either conditional or partial.
- (5) Supra protest, being the acceptance of the bill after protest for nonacceptance by the drawee, for the honor of the drawer, or a particular indorser.

They are also either:

- (6) Express, being an undertaking in direct and express terms to pay the hill
- (7) Implied, being an undertaking to pay the bill inferred from acts of a character fairly to warrant such an inference.

Commercial Meaning.

An engagement by the person on whom a bill of exchange is drawn to pay the bill, usually made by the person writing the word "acceptance" across the bill and signing his name or simply writing his name across or at the end of the bill. Kimbark v. Illinois, etc., Co., 103 Ill. App. 646.

Of Goods-Act of Ownership, As.

Any act done by the buyer which he would have no right to do if he were not the owner, constitutes an acceptance of the goods. Wolf Co. v. Refrigerating Co., 252 Ill. 502.

Of Property.

The receipt of a thing offered by another with an intention to retain it, indicated by some act sufficient for the purpose. 2 Pars. Cont. 221.

The element of receipt must enter into every acceptance, though receipt does not necessarily mean, in this sense, actual manual taking. To this element there must be added an intention to retain.

This retention may exist at the time of the receipt, or subsequently; it may be indicated by words or acts, or any medium understood by the parties; and an acceptance of goods will be implied from mere detention, in many instances.

An acceptance involves very generally the idea of a receipt in consequence of a previous undertaking, on the part of the person offering, to deliver such a thing as the party accepting is in some manner bound to receive. It is through this meaning that the term "acceptance," as used in reference to bills of exchange, has a relation to the more general use of the term. As distinguished from "assent," acceptance would denote receipt of something in compliance and satisfactory fulfillment of a contract to which assent has been previously given. See "Assent."

ACCEPTED.

Account Does Not Import Guaranty.

The word "accepted" written on an account, does not import a guaranty of its payment by the person making the indorsement, but refers to some arrangement between the parties, the nature of which must be explained before the force of the indorsement can be seen. Hatch v. Antrim, 51 Ill. 108.

ACCEPTOR SUPRA PROTEST.

A party who accepts a bill which has been protested, for the honor of the drawer or any one of the indorsers.

ACCESS.

Approach, or the means or power of approaching. The right of the occupant of land to pass from his premises to a highway.

Sometimes by access is understood sexual intercourse; at other times, the opportunity of communicating together, so that sexual intercourse may have taken place, is also called access. In this sense, a man who can readily be in company with his wife is said to have access to her, and in that case her issue are presumed to be his issue; but this presumption may be rebutted by positive evidence that no sexual intercourse took place. 1 Turn. & R. 141.

Synonymous with Ingress and Egress.

The courts use the words "ingress" and "egress" interchangeably with the word "access." Hacker Co. v. City of Joliet, 196 Ill. App. 423.

ACCESSION.

To Property.

The right to all which one's own property produces, whether that property be movable or immovable, including the increase of animals, and the right to that which is so united to it, either naturally or artificially, as not to be readily separable. See 45 Vt. 4; 2 Kent. Comm. 360; 2 Bl. Comm. 404.

It is sometimes used in a narrower sense, as including only the acquirement by the owner of property of that which is added to or incorporated with it, as by the erection of additions to a building, the setting out of trees, etc., and in this sense is to be distinguished from "specification," which is the transformation of property into another species by the labor of another, as by the sawing of trees into lumber. See 2 Bl. Comm. 404.

In International Law.

The absolute or conditional acceptance, by one or several states, of a treaty already concluded between other sovereignties. Merlin Repert.

ACCESSION, DEED OF.

In Scotch law. A deed executed by the creditors of a bankrupt or insolvent debtor, by which they approve of a trust given by their debtor for the general behoof, and bind themselves to concur in the plans proposed for extricating his affairs. Bell, Dict.

ACCESSORY.

Criminal Code-Statutory Definition.

An "accessory," within the meaning of the Criminal Code, is he who stands by and aids, abets or assists, or assisting, hath devised, or encouraged, the perpetration of the crime. Criminal Code div. 2 2 (J. & A. 3967); Criminal Code 1874 div. 2 2; Criminal Code 1845 13; People v. Trumbley, 252 III. 33; Watts v. People, 204 III. 238; Jones v. People, 166 III. 269; Fixmer v. People, 153 III. 128; Usselton v. People, 149 III. 617; Spies v. People, 122 III. 101; Reynolds v. People, 83 III. 480; Baxter v. People, 8 III. 382.

At Common Law-Lord Hale's Definition.

One who, being absent at the time of the commission of the offense, doth yet procure, counsel or commend another to commit it. Usselton v. People, 149 Ill. 615.

ACCESSORY BEFORE THE FACT.

One whose will contributes to another's felonious act, committed while too far himself from the act to be a principal. Usselton v. People, 149 Ill. 616.

ACCIDENT.

(Lat. accidere,—ad, to, and cadere, to fall.) An event which, under the circumstances, is unusual and unexpected by the person to whom it happens.

The happening of an event without the concurrence of the will of the person by whose agency it was caused; or the happening of an event without any human agency. 32 Conn. 85. See "Inevitable Accident."

The happening of an event without the aid and the design of the person and which is unforeseen. Travelers' Ins. Co. v. Ayers, 217 Ill. 392; Fidelity, etc., Co. v. Morrison, 129 Ill. App. 365.

An unforeseen danger occurring without the will or design of the person whose mere act causes it; an unexpected, unusual or undesigned occurrence; an event which under the circumstances is unusual and unexpected by the person to whom it happens. Hutton v. States, etc., Co., 186 Ill. App. 503.

An event which takes place without one's foresight or expectation; an event which proceeds from unknown cause or is an unusual effect of a known cause, and therefore not expected. Fidelity, etc., Co. v. Morrison, 129 Ill. App. 365.

An event causing damage, happening unexpectedly and without fault. Kellar v. Shippee, 45 Ill. App. 381.

Classification.

Accidents are of two kinds, first, those that befall a person without any human agency, as the killing of a person by lightning, and second, those that are the result of human agency. Jassas v. Bankers Insurance Corporation, 209 Ill. App. 147.

Accidents have been classified as (1) such as are inevitable or absolutely unavoidable, because influenced by the uncontrollable operation of nature; (2) such as result from human agency alone, but are unavoidable under the circumstances; (3) such as are avoidable because in a given case the act was not called for by any duty or necessity, and the injury resulted from a want of that extraordinary care which the law requires of one doing such a lawful act, or because the accident was the result of actual negligence or folly, and might, with reasonable care adapted to the emergency, have been avoided. Dreyer v. People, 188 Ill. 51.

Common Meaning.

The word "accident" is commonly used to denote what happens unexpectedly and without design, although it may be owing to the fault or neglect of some one. Nelson v. Richardson, 108 Ill. App. 126.

In Equity Practice.

Such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct in the party. Story, Eq. Jur. § 78; 35 Conn. 198.

An occurrence in relation to a contract

which was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over the other in a court of law. Jeremy, Eq. 358. This definition is objected to because, as accidents may arise in relation to other things besides contracts, it is inaccurate in confining accidents to contracts; besides, it does not exclude cases of unanticipated occurrences resulting from the negligence or misconduct of the party seeking relief. See, also, 1 Spense, Eq. Jur. 628.

An unforeseen or unexpected event occurring external to the party affected by it, and of which his own agency is not the proximate cause whereby, contrary to his own intention and wish, he loses some right which it would be a violation of good conscience for the person obtaining to retain. 2 Pom. Eq. Jur. § 823.

It differs from "mistake" in that the latter is based on a voluntary action of the person affected under a mistaken impression.

Legal Meaning.

An event which is the result of an unknown cause or is the result of an unusual and unexpected event happening in such an unusual manner from a known cause that it could not be reasonably expected or foreseen and not the result of any negligence. Cornwell v. Bloomington, etc., Ass'n, 163 Ill. App. 467.

That which happens without the fault of anybody. Nelson v. Richardson, 108 Ill. App. 126.

ACCIDENTAL.

Event Due to Obscure Cause.

Where an event takes place the real cause of which cannot be traced or is at least not apparent, it ordinarily belongs to that class of occurrences which are designated as purely accidental. Chicago & E. I. R. Co. v. Reilly, 212 Ill. 511.

ACCIDENTAL DEATH.

Accident Insurance.

A death from taking an overdose of morphine is an "accidental death," within the meaning of a policy of accident insurance, where it appears that morphine taken in small quantities is not poisonous, and that the taking of the overdose was unintentional. Pixley v. Illinois, etc., Ass'n, 195 Ill. App. 137.

Antithesis of "Intentional."

An accidental death is one which is undesigned or unintended, the word "accidental," in that connection, being the antithesis of "intentional." Pixley v. Illinois, etc., Ass'n, 195 Ill. App. 137.

ACCIDENTAL MEANS.

Accident Insurance.

In an action to recover on a policy of accident insurance, where it appears that the injury was caused by external and violent means, the presumption against self-inflicted injuries and murder will prima facie prove that the injury was by "accidental means," within the meaning of the policy. Wilkinson v. Aetna, etc., Co., 144 Ill. App. 66.

Breaking Leg in Fight.

The breaking of a leg in a fight which was started by insured is an injury by "accidental means," within the meaning of the policy of accident insurance, although the insured started the fight; where the injury was the result of an accident occurring during the fight which produced an unusual and unexpected result. Hutton v. States, etc., Co., 186 Ill. App. 501.

Unintended and Unanticipated Result.

If the insured's act was attended with an unexpected and unusual result—one which could not have been reasonably anticipated, and which he did not intend to produce, that is, was not the natural or probable consequence of his act, and was not the result of design, but was produced unexpectedly and by chance—the injury was caused by accidental means within the meaning of policies of accident insurance. Robison v. U. S., etc., Co., 192 Ill. App. 477.

ACCOMMODATION.

Whatever supplies a want or affords ease, refreshment or convenience; anything furnished for use. Cecil v. Green, 60 Ill. App. 64.

ACCOMMODATION PAPER.

A loan of the maker's credit without restriction as to the manner of its use. Burr v. Beckler, 264 Ill. 234.

"A negotiable or non-negotiable bill or note, made by one who puts his name thereto, without consideration, with the intention of lending his credit to the party accommodated." Bouton v. Carmen, 205 Ill. 65; Miller v. Larned, 103 Ill. 570; Bouton v. Cameron, 99 Ill. App. 621.

ACCOMMODATION TRAIN.

One running at moderate speed, and stopping at all, or nearly all, stations. Gray v. Chicago, M. & St. P. Ry. Co., 189 Ill. 407.

Common Meaning—Implies Train Stopping at Local Stations.

In the general understanding, an accommodation train is one arranged to stop at most of the stations to accommodate that part of the passenger travel which is local, the demands of which are not met by through trains. Gray v. Chicago, M. & St. P. Ry. Co., 189 Ill. 407.

ACCOMPLICE.

One who is associated with another in the commission of a crime. People v. Turner, 260 Ill. 92.

One who is in some way concerned in the commission of a crime, though not as a principal, including all persons who have been concerned in its commission, whether they are considered, in strict legal propriety, as principals in the first or second degree, or merely as accessories before or after the fact; one of many equally concerned in a felony. Cross v. People, 47 Ill. 158.

Applicable to Person Turning State's Evidence.

The term "accomplice" is generally applied to those who are admitted to give evidence against their fellow criminals for the furtherance of justice which might otherwise be eluded. Cross v. People, 47 Ill. 158.

ACCORD.

A satisfaction agreed upon between the parties which, when performed, operates as a bar to all actions upon that account. Bailey v. Cowles, 86 Ill. 335; Aetna, etc., Co. v. Stevens, 48 Ill. 33.

ACCORD AND SATISFACTION.

Acceptance of Check or Draft.

Where a debtor sends to the creditor a check or draft for less than the amount claimed, accompanied by acts or declarations which amount to a condition that if taken it is taken in full satisfaction of the demand, the transaction will constitute an accord and satisfaction. Canton, etc., Co. v. Parlin, etc., Co., 215 Ill. 247; Bingham v. Browning, 197 Ill. 136; Lapp v. Smith, 183 Ill. 184; Day, etc., Co. v. Serrell, 177 Ill. App. 36; Stan v. Regelin, 147 Ill. App. 552; Northwestern, etc., Co., v. Crawford, 126 Ill. App. 481; Canton, etc., Co. v. Parlin, etc., Co., 117 Ill. App. 625; Lang v. Lane, 83 Ill. App. 547.

Acceptance of Money in Satisfaction.

The payment and acceptance of money in satisfaction of any unliquidated demand is a good accord and satisfaction. Wallner v. Chicago, etc., Co., 245 Ill. 151.

Acceptance of Part.

Where the amount of the debt is fixed and certain, or capable of being reduced to certainty by computation, the payment of part is not an accord and satisfaction without a release under seal, but where unascertained and not fixed or certain, the payment and acceptance in satisfaction of a less sum will support a plea of accord and satisfaction. Martin v. White, 40 Ill. App. 288; Capital, etc., Co. v. Detwiler, 23 Ill. App. 659.

Acceptance of Property.

A valid accord and satisfaction takes place where some specific article of personal property or a conveyance of real property is accepted in satisfaction of the demand, irrespective of the intrinsic value of the property. Kaufman v. Sorrels, 164 Ill. App. 327.

Elements.

To constitute an accord and satisfaction, there must be an honest difference of opinion between the parties as to the amount due, and the check or draft must be offered under such circumstances as amount to a condition that it is to be received in full payment of the demand. Slimmer v. Dolliver, etc., Bank, 195 Ill. App. 85.

ACCORDING TO ORDINANCES.

Construction Contract — Makes Ordinances Part of Contract.

A contract requiring construction work to be done "according to ordinances" of the city of Chicago has the effect of making the ordinances as much a part of the contract as though set out in full therein. Levin v. Strempler, 194 Ill. App. 302.

ACCORDING TO RECORDED PLAT.

Deed-Reserves Easement Only.

A deed reserving to the grantor the streets and alleys of a town "according to recorded plat" of such town reserves an easement only and passes the fee of the streets and alleys to the grantee subject to the easement, since the recording of the plat merely vested an easement, and not a fee, in the municipality for public use. Gould v. Howe, 131 Ill. 497.

ACCORDING TO THE COURSE OF THE COMMON LAW.

Judgment by Cognovit.

The entry of judgment by cognovit under a warrant of an attorney to confess judgment is a proceeding according to the course of the common law. Bush v. Hanson, 70 Ill. 483.

ACCORDING TO THE PROVISIONS OF LAW.

Cities and Villages Act—Refers to Civil Service Act.

The expression "according to the provisions of law," used in sections 31 and 32 of the act of 1895 (J. & A. 1830, 1831), known as the Civil Service Act, relating to the payment of salary or wages, refers to the provisions of the Civil Service Act and not to those of the law generally. People v. Loeffler, 175 Ill. 596.

ACCOUCHEMENT.

The act of giving birth to a child.

ACCOUNT.

A detailed statement of mutual demands in the nature of debt and credit between the parties, arising out of contract or some fiduciary relation. 45 Mo. 573.

A written statement of pecuniary transactions. Abbott.

It is to be distinguished from "balance," which is but the conclusion or result of the account. 45 Mo. 574.

Some matter of debt or credit, or of a demand in the nature of a debt or credit, between the parties, arising out of a contract or fiduciary relation, or from some duty imposed by law, not required to be in any particular form or necessarily to contain detailed information. State v. Illinois C. R. Co., 246 Ill. 227.

A detailed statement. Moyses v. Rosenbaum, 98 Ill. App. 9; Fred W. Wolf Co. v. Salem, 33 Ill. App. 617.

As List or Catalogue.

An account may be no more than a list or catalogue of terms, whether of debts or credits. State v. Illinois C. R. Co., 246 Ill. 227.

Elements.

An account must be something which will furnish the person having the right thereto, information of a character which will enable him to make some reasonable v. Rosenbaum, 98 Ill. App. 9; Fred W. Wolf Co. v. Salem, 33 Ill. App. 617.

Implies Series of Transactions.

The word "account" implies, not a single transaction, but a series of transactions; not one purchase, but several purchases. Frost v. Standard, etc., Co., 116 Ill. App. 644.

Meaning Depends on Connection.

The word has no clearly defined legal meaning or definition, its meaning being flexible, and depending somewhat on surrounding circumstances and the connection in which it is used. State v. Illinois C. R. Co., 246 Ill. 227.

Open Account.

One which has not been closed or stated.

Current Account.

One kept open in expectation of further dealings.

Book Accounts.

Those evidenced by entries in books of account.

Account Rendered.

An account presented by the creditor to the debtor.

ACCOUNT BOOK.

A book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. Such books, when regularly kept, may be admitted in evidence. Greenl. Ev. §§ 115-118.

ACCOUNTABLE RECEIPT.

An acknowledgment of the receipt of money to be accounted for by the person receiving it, as distinguished from a receipt for money paid in discharge of a debt. 1 Exch. 138.

ACCOUNTANT GENERAL, OR ACCOMPTANT GENERAL.

An officer of the English court of chancery, by whom the moneys paid into court are received, deposited in bank, and disbursed. The office appears to have been established by an order of May 26, 1725, and 12 Geo. I. c. 32, before which time the effects of the suitors were locked up in the vaults of the Bank of England, under the care of the masters and two of the six clerks. 1 Smith, Ch. Prac. 22. It is now abolished. 35 & 36 Vict. 44.

ACCOUNT STATED.

One which has been approved by the parties, and the balance shown by it agreed to either (1) expressly, or (2) impliedly, as by retaining an account rendered without objection.

An agreement between parties who have had previous transactions of a monetary character, that all the items of the accounts representing such transactions are true and that the balance struck is correct, together with a promise express or implied, for the payment of such balance. Dean v. W. B. Conkey Co., 180 Ill. App. 178; See King v. McChesney, 88 Ill. App. 343 (quoting substance of definition).

An agreed balance of accounts; an account which has been examined and accepted by the parties. Peterson v. Wachowski, 86 Ill. App. 663.

An agreement between the parties to an account that all the items thereof are correct. Neagle v. Herbert, 73 Ill. App. 27.

Account Retained Unreasonable Time.

Where an account is rendered to another and retained without objection for an unreasonable time, there is recognition by the latter of the correctness of the account, constituting an account stated. Dean v. W. B. Conkey Co., 180 Ill. App. 179.

Employers' Liability Insurance.

Where the premium to be paid on a policy of employers' liability insurance

was a percentage of the amounts paid by insured in wages, to be computed from correct reports furnished by insured to insurer, a statement of the amounts due made by insurer to insured, based on such reports, is not an "account stated," barring insured from recovering a balance of premium where the reports were incorrect, although insurer without objection received payments of the amount so stated to be due, the reports being not contemplated by the contract as a basis for the adjustment of a controversy, and the transaction being not independent of the original cause of action, or based on a new consideration and involving a promise to pay the amounts found to be due. Employers', etc., Corporation v. Kelly, etc., Co., 195 Ill. App. 630.

New Cause of Action.

An account stated is in the nature of a new promise or undertaking and raises a new cause of action. Dean v. W. B. Conkey Co., 180 Ill. App. 179.

Repeated Promises to Pay Claim.

An account stated is created when repeated promises to pay a claim are made at different times. Harvey v. Read, 207 Ill. App. 197.

ACCOUNTED FOR.

Administration Act—Means Devoted to Purposes of Administration.

The expression "accounted for," used in section 70 of the Administration Act (J. & A. 119), as applied to executors, means that the property has been devoted by the executors to the purposes of the proper and due administration of the estate in pursuance of the will of the deceased. Auburn, etc., Bank v. Brown, 172 Ill. 286.

Includes Conveyance as Will Directs.

Where a will empowered executors to divide and partition land among devisees, the land is "accounted for," within the meaning of section 70 of the Administration Act (J. & A. 119), relating to the limitation of the time for presenting claims against the estates of deceased

persons, when the executors allot the land to those entitled, convey and deliver possession of it to such persons and make report thereof to the court. Auburn, etc., Bank v. Brown, 172 Ill. 286.

ACCOUNTING.

Acknowledgment of Old Debt.

An accounting is the acknowledgment of an old debt and not the statement of a new one. State v. Illinois C. R. Co., 246 Ill. 241.

ACCREDIT.

In international law. To acknowledge. Used of the act by which a diplomatic agent is acknowledged by the government near which he is sent, which makes his public character known, and becomes his protection, and also of the act by which his sovereign commissions him.

ACCROACH.

To attempt to exercise royal power. 4 Bl. Comm. 76.

A knight who forcibly assaulted and detained one of the king's subjects till he paid him a sum of money was held to have committed treason on the ground of accroachment. 1 Hale, P. C. 80.

In French Law.

To delay. Whishaw.

ACCRUE.

To grow to; to be added to, as the interest accrues on the principal. Accruing costs are those which become due and are created after judgment; as the costs of an execution.

To rise in due course; to become a present and enforceable demand. McGuigan v. Rolfe, 80 Ill. App. 259.

Cause of Action.

A cause of action may be said to "accrue," when the liability arises so far as to be enforceable. McGuigan v. Rolfe, 80 Ill. App. 259.

A cause of action is said to accrue to

a person when that person first comes to a right to bring an action. Smart v. Morrison, 15 Ill. App. 229; Jenkins v. International Bank, 9 Ill. App. 459.

Common Meaning.

The word "accrued," in its general and popular sense, means to be added or attached to something else. Johnson v. Humboldt, etc., Co., 91 Ill. 95.

Limitations Act.

To arise, to happen, to come to pass; as the statute of limitation does not commence running until the cause of action has accrued. 1 Bouv. Inst. note 861; 2 Rawle (Pa.) 277; 10 Watts (Pa.) 663; Bac. Abr. "Limitation of Actions" (D3); 59 Hun (N. Y.) 145; 159 Pa. St. 556.

A cause of action is to be deemed as having "accrued," within the meaning of the Limitations Act (J. & A. 7916 et seq.), after the occurrence of that which is held to revive the cause of action. Schifferstein v. Allison, 123 Ill. 666.

Implies Prior Existence.

The word "accrued" conveys the idea of prior existence. Dare v. Wabash C. & W. R. Co., 119 Ill. App. 258.

Promissory Note.

A cause of action on a promissory note has "accrued," within the meaning of secton 16 of the Limitations Act (J. & A. 7211), at the time the note becomes due and unpaid. Warren v. Clemenger, 120 Ill. App. 439. To a similar effect see Story v. Thompson, 36 Ill. App. 377.

Not Applicable to "Right" or "Liability."

The term "accrued" is not usually applied to the terms "right" or "liability."

Smart v. Morrison, 15 Ill. App. 229.

ACCRUES.

Limitations Act—Foreclosure of Mortgage.

The right of action to foreclose a mortgage or deed of trust "accrues," within the meaning of section 11 of the Limitations Act (J. & A. 7206), after the last payment indorsed on the indebtedness secured thereby. Schifferstein v. Allison, 123 Ill. 666.

ACCUMULATIVE LEGACY.

A double or additional legacy; a legacy given in addition to another given by the same instrument, or by another instrument. 4 Ves. 90; 1 P. Wms. 424.

ACCOMENDA.

A contract which takes place when an individual intrusts personal property with the master of a vessel, to be sold for their joint account. In such case. two contracts place,-the contract called mandatum. by which the owner of the property gives the master power to dispose of it, and the contract of partnership, in virtue of which the profits are to be divided between them. One party runs the risk of losing his capital; the other his labor. If the sale produces no more than first cost. the owner takes all the proceeds; it is only the profits which are to be divided. Emerig. Mar. Loans, § 5.

ACCUSTOMED.

Ordinary Care-"Usually" Synonymous.

Within the meaning of the rule that ordinary care is that degree of care which persons of ordinary care and prudence are "accustomed" to use under like circumstances, the word "accustomed" is synonymous with "usually." Chicago & A. R. Co. v. Pearson, 82 Ill. App. 616.

ACKNOWLEDGMENT.

Deed.

The act of the grantor in a deed going before a competent officer, and then and there to him acknowledging or declaring the instrument produced, to be his act and deed. Short v. Conlee, 28 Ill. 228.

ACQUIESCE.

Implies Knowledge.

Ordinarily the term "acquiesce" implies knowledge, and a quiet submission

or compliance to a state of facts governed by that knowledge, in which sense it means to know and acquiesce. Chicago & A. R. Co. v. Myers, 86 Ill. App. 406.

ACQUIRE.

Charter of Corporation—Includes Power to Take by Will.

A charter empowering a corporation to "acquire" property is broad enough, by the word "acquire," to enable the corporation to take by will. Santa Clara, etc., Academy v. Sullivan, 116 Ill. 389.

ACQUITTAL.

In Contracts.

A release or discharge from an obligation or engagement. 26 Wend. (N. Y.) 283.

According to Lord Coke, there are three kinds of acquittal, namely, by deed, when the party releases the obligation; by prescription; by tenure. Co. Litt. 100a.

In Criminal Practice.

The absolution of a party charged with a crime or misdemeanor.

The absolution of a party accused on a trial before a traverse jury. 1 Nott & McC. (S. C.) 36; 3 McCord (S. C.) 461.

Acquittals in fact are those which take place when the jury, upon trial, finds a verdict of not guilty.

Acquittals in law are those which take place by mere operation of law; as where a man has been charged merely as an accessary, and the principal has been acquitted. 2 Inst. 364.

ACROSS.

From side to side; athwart; crosswise; quite over. Illinois C. R. Co. v. Chicago, 141 Ill. 598.

Cities and Villages Act—Includes Power to Cross at Grade.

Paragraph 89 of section 1 of article 5 of the Cities and Villages Act (J. & A. 1334), empowering cities and villages to extend streets "across" railroad tracks,

implies, by the word "across," a power to cross at grade. Illinois C. R. Co. v. Chicago, 141 Ill. 599. See also At Grade.

"Over" Synonymous.

The words "across" and "over" may be used interchangeably, and have the same meaning. Illinois C. R. Co. v. Chicago, 141 Ill. 598.

ACQUITTANCE.

In contracts. An agreement in writing to discharge a party from an engagement to pay a sum of money. It is evidence of payment, and differs from a release in this, that the latter must be under seal, while an acquittance need not be under seal. Poth. Obl. note 781. See 3 Salk. 298; Co. Litt. 212a, 273a; 1 Rawle (Pa.) 391.

ACT.

(Lat. agere, to do; actus, done.) Something done or established.

General Legal Sense.

In its general legal sense, the word may denote something done by an individual, as a private citizen, or as an officer; or by a body of men, as a legislature, a council, or a court of justice; including not merely physical acts, but also decrees, edicts, laws, judgments, resolves, awards, and determinations.

Instrument in Writing.

An instrument in writing to verify facts. Webster. It is used in this sense to signify published acts of assembly, congress, etc. In a sense approaching this, it has been held in trials for treason that letters and other written documents were acts. 1 Fost. C. C. 198; 2 Starkie, 116.

In Civil Law.

A writing which states in a legal form that a thing has been done, said, or agreed. Merlin, Repert.

- Private Acts.

Private acts are those made by private persons as registers in relation to their re-

ceipts and expenditures, schedules, acquittances, and the like. Code, 7. 32. 6; Code, 4. 21; Dig. 22. 4; Civ. Code La. arts. 2231-2254; 8 Toullier, Dr. Civ. 94.

Acts under private signature are those which have been made by private individuals, under their hands. An act of this kind does not acquire the force of an authentic act by being registered in the office of a notary (11 Mart. [La.] 243; 5 Mart. [La.; N. S.] 693; 8 Mart. [La.] 568; 3 Mart. [La.; N. S.] 396; 3 La. Ann. 419), unless it has been properly acknowledged before the officer by the parties to it (5 Mart. [La.; N. S.] 196).

- Public Acts.

Public acts are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

In Scotch Practice.

As a noun, an abbreviation of actor (proctor or advocate, especially for a plaintiff or pursuer), used in records. "Act. A. Alt. B." an abbreviation of Actor, A. Alter B.; that is, for the pursuer or plaintiff, A., for the defender, B. 1 Brown, 336, note; 2 Brown, 144, note; 2 Brown, 507, note.

As a verb, to do or perform judicially; to enter of record. Surety "acted in the books of adjournal." 1 Brown, 4.

ACT IN PAIS.

An act performed out of court, and which is not a matter of record.

A deed or an assurance transacted between two or more private persons in the country, that is, according to the old common law, upon the very spot to be transferred, is matter in pais. 2 Bl. Comm. 294. See "In Pais."

ACT OF CURATORY.

In Scotch practice. The act extracted by the clerk, upon any one's acceptance of being curator. Forbes, Inst. pt. 1, bk. 1, c. 2, tit. 2; 2 Kames, Eq. 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

ACT OF GOD.

A thing which could not reasonably have been anticipated. Ohio & M. Ry. Co. v. Ramey, 139 Ill. 13.

Something superhuman, or something in opposition to the act of man. Merchants', etc., Co. v. Smith, 76 Ill. 544; Chicago & N. W. Ry. Co. v. Sawyer, 69 Ill. 289; Indiana, I. & I. R. Co. v. Hawkins, 81 Ill. App. 572.

Inevitable accident, without the intervention of man. Parmelee v. Lowitz, 74 Ill. 117. To a similar effect see Gillett v. Ellis, 11 Ill. 580.

An event which could not happen by the intervention of man; such as death, storm, earthquake, extraordinary flood, etc.; such inevitable accidents as cannot be prevented by human care, skill or foresight, but which result from natural causes, such as lightning and tempest, floods and inundation. Indiana I. & I. R. Co. v. Hawkins, 81 Ill. App. 571.

Intervening Human Agency.

"If there is any intervening human agency which contributes to cause the damage it cannot be considered as caused by an act of God." Sandy v. Lake S. E. R. Co., 235 Ill. 202; Welfelt v. Illinois C. R. Co., 149 Ill. App. 326.

Result of Unavoidable Cause.

A loss or injury is due to the act of God when it is occasioned exclusively by natural causes such as could not be prevented by human care, skill and foresight. Providence, etc., Co. v. Western, etc., Co., 247 Ill. 89; Wald v. Pittsburg, C. C. & St. L. R. Co., 162 Ill. 551; Providence v. Western, etc., Co., 153 Ill. App. 122; Welfelt v. Illinois C. R. Co., 149 Ill. App. 326; Chicago v. Smith, 95 Ill. App. 339.

Unprecedented Flood.

Floods of unprecedented extent, against which human foresight cannot

reasonably guard, are always embraced within those extraordinary evidences known as "acts of God." Wald v. Pittsburg, C. C. & St. L. R. Co., 60 Ill. App. 465.

Unusual Rainfall.

Where a levee and sanitary district constructs a levee in which the only outlet was a pipe of insufficient dimensions which became clogged with refuse, the damage done to the land and crops of an owner by the resulting overflow cannot be said to be due to an "act of God," although the rainfall was unusually heavy. Handfelter v. East Side, etc., District, 194 Ill. App. 266.

ACT OF GRACE.

In Scotch law. A statute by which the incarcerating creditor is bound to aliment his debtor in prison, if such debtor has no means of support, under penalty of a liberation of his debtor if such aliment be not provided. Paterson, Comp.

ACT OF SETTLEMENT.

The statute of 12 & 13 Wm. III. c. 2, limiting the English crown to the Princess Sophia, of Hanover, and the heirs of her body being Protestants.

ACT OF SUPREMACY.

The statute of 1 Eliz. c. 1, declaring the supremacy of the crown over the ecclesiastical authorities.

ACT OF UNION.

The statute of 5 Anne, c. 8, by which the articles of union between the two kingdoms of England and Scotland were ratified and confirmed. 1 Bl. Comm. 97.

ACT ON PETITION.

A form of summary proceeding formerly in use in the high court of admiralty, in England, in which the parties stated their respective cases briefly, and supported their statements by affidavit. 2

Dods. Adm. 174, 184; 1 Hagg. Adm. 1, note.

ACT WITHIN THIS STATE AS A CORPORATION.

Quo Warranto Act.

Persons "act within this state as a corporation," within the meaning of section 1 of the Quo Warranto Act (J. & A. 8687) if, in forming an association for engaging in the insurance business, they limit their liability to the amount of money contributed by each and assume to give perpetuity to the business by making membership certificates transferable by the assignment of the member or his personal representatives, notwithstanding the fact that such persons may be legally liable on any policy they may have issued since such acts can only be done by a corporation. Greene v. People, 150 Ill. 514.

ACTE.

In French law. Denotes a document, or formal, solemn writing, embodying a legal attestation that something has been done corresponding to one sense or use of the English word "act." Thus, actes de naissance are the certificates of birth, and must contain the day, hour, and place of birth, together with the sex and intended Christian name of the child, and the names of the parents and of the witnesses. Actes de mariage are the marriage certificates, and contain names, professions, ages, and places of birth and domicile of the two persons marrying, and of their parents; also the consent of these latter, and the mutual agreements of the intended husband and wife to take each other for better and worse, together with the usual attestations. Actes de deces are the certificates of death, which are required to be drawn up before any one may be buried. Les actes de l'etat civil are public documents. Brown.

ACKNOWLEDGMENT MONEY.

In English law. A sum paid by ten-2 ants of copyhold in some parts of England, as a recognition of their superior fords. Cowell; Blount. Called a fine by Blackstone. 2 Bl. Comm. 98.

ACQUETS.

In civil law. Property which has been acquired by purchase, gift, or otherwise than by succession.

Immovable property which has been acquired otherwise than by succession. Merlin, Repert.

The profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations, made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both. Civ. Code La. art. 2371.

ACQUIESCENCE.

A silent appearance of consent. Worcester.

It is to be distinguished from avowed consent, on the one hand, and from open discontent or opposition, on the other. It amounts to a consent which is impliedly given by one or both parties to a proposition, a clause, a condition, a judgment, or to any act whatever.

It imports an assent which, though implied, is to some extent active, and is to be distinguished from laches, which is mere passive neglect. 69 Cal. 255.

ACQUISITION.

Defined.

The act by which a person procures the property of a thing.

The thing the property in which is secured.

Original.

Original acquisition is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. It may result from occupancy. (1 Bouv. Inst. note 490; 2 Kent, Comm. 289), accession (1 Bouv. Inst. note 499; 2 Kent, Comm. 293), intellectual labor,—namely, for inventions, which are secured by patent rights,—and for the authorship of books, maps, and charts, which is protected by copyrights (1 Bouv. Inst. note 508.)

Derivative.

Derivative acquisition is that by which property is procured from others, either by act of law or by act of the parties. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy, or by act of the parties, as by gift, will, or sale.

How May Result.

An acquisition may result from the act of the party himself, or those who are in his power acting for him, as his children while minors. 1 N. H. 28. See Dig. 41. 1. 53; Inst. 2. 9. 3.

ACTING AS ATTORNEY FOR THE ESTATE.

Affidavit—Shows Employment by Administrator.

An affidavit under section 81 of the Administration Act, (J. & A. 130) charging that defendant, "acting as attorney for the estate of deceased," collected money, an order for the payment of which is sought, sufficiently shows that the money was collected while acting as attorney for the administrator, and not in pursuance of a previous employment by the deceased. Dinsmoor v. Bressler, 164 Ill. 220.

ACTIO.

In civil law. A specific mode of enforcing a right before the courts of law, e. g., legis actio; actio sacrementi. In this sense we speak of actions in our law, e. g., the action of debt. The right to a remedy, thus: Ex nudo pacto non oritur actio, no right of action can arise upon a naked pact. In this sense we rarely use

the word "action." 3 Ortolan, Inst. § 1830; 5 Savigmy, System, 10; Mackeld. Cov. Law (13th Ed.) § 193.

The first sense here given is the older one. Justinian, following Celsus, gives the well-known definition: Actio nihil aliud est, quan jus persequendi in judicio, quod sibi debetur, which may be thus rendered: An action is simply the right to enforce one's demand in a court of law. Inst. 4. 6, "De Actionibus." See "Action."

Divisions:

According to Nature.

In the sense of a specific form of remedy, there are various divisions of actiones. Actiones civiles are those forms of remedies which were established under the rigid and inflexible system of the civil law, the jus civiles. Actiones honorariae are those which were gradually introduced by the practors and aediles, by virtue of their equitable powers, in order to prevent the failure of justice which too often resulted from the employment of the actiones civiles. These were found so beneficial in practice that they eventually supplanted the old remedies, of which, in the time of Justinian, hardly a trace remained. Mackeld. Civ. Law. § 194; 5 Savigny, System. Directae actiones, as a class, were forms of remedies for cases clearly defined and recognized as actionable by the law. Utiles actiones were remedies granted by the magistrate in cases to which no actio directa was applicable. They were framed for the special occasion, by analogy to the existing form, and were generally fictitious; that is, they proceeded upon the assumption that a state of things existed which would have entitled the party to an action directa, and the cause was tried upon this assumption, which the other party was not allowed to dispute. 5 Savigny, System, § 215.

According to Subject-Matter.

Again there are actiones in personam and actiones in rem. The former class includes all remedies for the breach of an obligation, and are considered to be directed against the person of the wrong-

doer. The second class comprehends all remedies devised for the recovery of property, or the enforcement of a right not founded upon a contract between the parties, and are therefore considered as rather aimed at the thing in dispute than at the person of the defendant. Mackeld. Civ. Law, § 195; 5 Savigny, System, § § 206-209; 3 Ortolan, Inst. § 1952 et seq.

According to Object.

In respect to their object, actions are either (a) actiones rei persequendae causa comparatae, for the recovery of property or damages, to which class belong all actiones in rem, and those of the actiones in personam, which were directed merely to the recovery of the value of a thing, or compensation for an injury; or (b) actiones poenales (called also, actiones ex delicto), in which a penalty was recovered of the delinquent; or (c) actiones mixtae, in which were recovered both the actual damages and a penalty in addition. Actiones poenales and actiones mixtae comprehended cases of injuries for which the civil law permitted redress by private action, but which modern civilization universally regards as crimes; that is, offenses against society at large, and punished by proceedings in the name of the state alone. Thus, theft, receiving stolen goods, robbery, malicious mischief, and the murder or negligent homicide of a slave (in which case an injury to property was involved), gave rise to private actions for damages against the delinquent. 4. 1. De obligationibus quae ex delicto nascuntur. Inst. 4. 2. De bonis vi raptis. Inst. 4. 3. De lege aquilia. Mackeld. Civ. Law, § 196; 5 Savigny, System, §§ 210-212.

According to Procedure.

In respect to the mode of procedure, actiones in personam are divided into stricti juris, and bonae fidei actiones. In the former, the court was confined to the strict letter of the law; in the latter, something was left to the discretion of the judge, who was governed in his decisions by considerations of what ought

to be expected from an honest man under circumstances similar to those of the plaintiff or defendant. Mackeld. Civ. Law, § 197a.

Besides this classification, the different actions had specific names, the principal of which follow.

ACTIO ARBITRARIA.

In the civil law. An arbitrary action; one depending upon the discretion of the judge (ex arbitrio judicis pendens); or in which the judge was allowed to determine, according to equity and the circumstances of the particular case, how satisfaction should be made to the plaintiff (permittitur judici ex bono et aequo secundum cujusque rei de qua actum est naturam, aestimare quemadmodum actori satisfieri oporteat). If the defendant refused to conform to the decision of the judge, he might be condemned at discretion (nisi arbitrio judicis actori satisfaciat,--condemnari debeat). Inst. 4 6. 31.

ACTIO AD EXHIBENDUM.

In civil law. An action instituted for the purpose of compelling the person against whom it was brought to exhibit some thing or title in his power.

It was always preparatory to another action, which lay for the recovery of a thing movable or immovable. 1 Merlin, Quest. de Droit, 84.

ACTIO CALUMNIAE.

In the civil law. An action to restrain the defendant from prosecuting a groundless proceeding or trumped-up charge against the plaintiff. Hunter, Rom. Law, 859.

ACTIO COMMODATI CONTRARIA.

In civil law. An action by the borrower against the lender, to compel the execution of the contract. Poth. Pret. a Usage, note 75.

ACTIO COMMODATI DIRECTA.

In civil law. An action by a lender against a borrower, the principal object of which is to obtain a restitution of the thing lent. Poth. Pret. a Usage, notes 65, 68.

ACTIC COMMUNI DIVIDUNDO.

In civil law. An action for a division of the property held in common. Story, Partn. (Bennett Ed.) § 352.

ACTIO COMMUNIS.

A common action. A term applied by Bracton to an action where the thing demanded was common, and not several. Braction, fol. 103.

ACTIO CONDICTIO INDEBITATI.

In civil law. An action by which the plaintiff recovers the amount of a sum of money or other thing he paid by mistake. Poth. Promutuum, note 140.

ACTIO CONFESSORIA.

In the civil law. An affirmative action; an action founded upon the affirmative allegation of some right in the plaintiff in another's land, as a right of way, etc., and not upon the denial of the right of another in his land. Inst. 4. 6. 2. Confessoria dicitur, quia constituta est verbis affirmativis. Bracton, fol. 103. See "Actio Negatoria."

ACTIO CONTRARIA.

In the civil law. A contrary or cross action, as distinguished from actio directa. Heinec. Elem. Jur. Civ. lib. 3, tit. 15, §§ 805, 816, 826; Bracton, fol. 103.

ACTIO CRIMINALIS.

In the common law. A criminal action. Bracton, fol. 102b.

ACTIO DE DOLO MALO.

In the civil law. An action of fraud; an action which lay for a defrauded per-

son against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions (cum omni causa); or, where this was not practicable, for compensation in damages. 1 Mackeld. Civ. Law, p. 221, § 217; Heinec. Elem. Jur. Cur. lib. 4, tit. 7, § 1222; Halifax, Code, 2. 21; Bracton, fol. 103b.

ACTIO DE IN REM VERSO.

In the civil law. An action concerning a thing converted to the profit of another; an action granted to one who had contract with a son or slave, in order to recover whatever the father or master, by means of such contract, had converted to their own advantage. Inst. 4. 7. 4; Dig. 15. 3; Code, 4. 26; Heinec. Elem. Jur. Civ. lib. 4, tit. 7, § 1222; Halifax, Anal. bk. 3, c. 2, note 7.

ACTIO DE PECULIO.

In the civil law. An action concerning or against the peculium or separate property of a party. An action to which fathers and masters were liable on the contracts of their children and servants, to the extent of the latter's peculium, patrimony, or separate estate. Inst. 4. 6. 10; Id. 4. 7. 4; Dig. 15. 1; Code, 4. 26; Heinec. Elem. Jur. Civ. lib. 4, tit. 7, § 1219.

ACTIO DE PECUNIA CONSTITUTA.

In the civil law. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another, without any formal stipulation (nulla stipulatione interposita). Inst. 4. 6. 9; Dig. 13. 5; Code, 4. 18.

ACTIO DEPOSITI CONTRARIA.

In civil law. An action which the depositary has against the depositor, to compel him to fulfill his engagement toward him. Poth. du Depot, note 69.

ACTIO DEPOSITI DIRECTA.

In civil law. An action which is brought by the depositor against the depositary, in order to get back the thing deposited. Poth. du Depot, note 60.

ACTIO EX CONDUCTO.

In civil law. An action which the bailor of a thing for hire may bring against the bailee, in order to compel him to redeliver the thing hired. Poth. du Contr. de Louage, note 59.

ACTIO EX EMPTO.

In the civil law. An action of purchase, or upon purchase; an action which a buyer is entitled to maintain against a seller, in order to cause him to deliver possession of the thing sold, with its titles and fruits, and everything dependent upon it. Poth. Cont. pt. 2, c. 1, art. 5; Inst. 4. 6. 28. Otherwise called actio empti, or emti. Dig. 19. 1; Code, 4. 49; Heinec. Elem. Jur. Civ. lib. 3, tit. 24, § 912.

ACTIO EX LOCATO.

In the civil law. An action upon letting; an action which the person (locator) who let a thing for hire to another might have against the hirer (conductor). Dig. 19. 2; Code, 4. 65. See "Actio Locati."

ACTIO EX STIPULATU.

In the civil law. An action to enforce a stipulation.

ACTIO EX VENDITO.

In the civil law. An action upon sale; an action which a seller is entitled to maintain against a buyer to recover the price of a thing sold and delivered. Inst. 4. 6. 28; Heinec. Elem. Jur. Civ. lib. 3, tit. 24, § 915. Called actio venditi. Id.; Dig. 19. 1; Code, 4. 49.

ACTIO FAMILIAE ERCISCUNDAE.

In civil law. An action for the division of an inheritance. Inst. 4. 6. 20; Bracton, 100b.

ACTIO FINIUM REGUNDORUM.

In the civil law. An action for the determination of boundaries between adjoining lands. Inst. 4. 17. 6; Id. 4. 6. 20. Enumerated by Bracton and Fleta among mixed actions. Bracton, fol. 444; Fleta, lib. 5, c. 9, § 3.

ACTIO FURTI.

In the civil law. An action of theft; an action founded upon theft. Inst. 4. 1. 13-17; Bracton, fol. 444. This could only be brought for the penalty attached to the offense (tantum ad poence persecutionem pertinet), and not to recover the thing stolen itself, for which other actions were provided. Inst. 4. 1. 19.

ACTIO IN FACTUM.

In civil law. An action adapted to the particular case which had an analogy to some actio in jus, which was founded on some subsisting acknowledged law. Spence, Eq. Jur. 212. The origin of these actions is strikingly similar to that of actions on the case at common law.

ACTIO IN QUADRUPLUM.

In the civil law. An action for the quadruple value of a thing. Inst. 4. 6. 21; Bracton, fol. 103a.

ACTIO IN REM.

An action against the thing. See "Actio" (2).

ACTIO IN SIMPLUM.

In the civil law. An action for the single value of a thing. Inst. 4. 6. 21. 22; Bracton, fol. 103a.

ACTIO IN TRIPLUM.

In the civil law. An action for the triple value of a thing. Inst. 4. 6. 21. 24; Bracton, fol. 103a.

ACTIO INDIRECTA.

An indirect action. A species of action mentioned by Bracton, probably the reverse of the actio directa. Bracton, fol. 103a.

ACTIO INJURIARUM, OR DAMNI INJURIA.

In the civil law. An action for injuries done by beating, wounding, slanderous language, libel, and the like. Inst. 4. 4. pr. 1, 12; Bracton, fol. 103b.

ACTIO JUDICATI,

In civil law. An action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards, and then the immovables which were delivered in pledge to the creditors, or put under the care of a curator, and if, at the end of two months, the debt was not paid, the land was sold. Dig. 42. 1; Code, 8. 34.

According to some authorities, if the defendant then utterly denied the rendition of the former judgment, the plaintiff was driven to a new action, conducted like any other action, which was called actio judicati, and which had for its object the determination of the question whether such a judgment had been rendered. The exact meaning of the term is by no means clear. See Savigny, System, 305, 411; 3 Ortolan, Just. § 2033.

ACTIO LEGIS.

In the Roman law. A legal or lawful action; an action of or at law. Dig. 1. 2. 2. 6.

One of the sources of the unwritten law of Rome. Butler, Hor. Jur. 47. So called, according to Gaius, either because they were expressly given by the laws, or because they were expressed in the words of the laws. Gaius, Inst. iv. § 11.

ACTIO LEGIS AQUILLE.

In the civil law. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called damni injuriae actio. Inst. 4. 3; Heinec. Elem. Jur. Civ. lib. 4, tit. 3; Halifax, Anal. bk. 2, c. 24; Bracton, fol. 103b.

ACTIO LOCATI.

In the civil law. An action which lay for the letter (locator) of a thing against the hirer, where the terms of the contract were not complied with by the latter. Inst. 3. 25. pr.; Dig. 19. 2; Heinec. Elem. Jur. Civ. lib. 3, tit. 25, § 928. See "Actio ex Locato."

ACTIO MANDATI.

In civil law. An action founded upon a mandate.

ACTIO NEGATORIA (OR NEGATIVA).

In the civil law. A negatory or negative action; an action founded on the denial (negatio) of another's right; as where a right of way or other servitude in a particular estate is denied. Inst. 4. 6. 2; Bracton, fol. 103a; Heinec. Elem. Jur. Civ. lib. 4, tit. 6, § 1136; Halifax, Anal. bk. 3, c. 1, note 8. See "Actio Confessoria."

ACTIO NEGOTIORUM GESTORUM

In the civil law. An action upon, or on account of, business done. An action given in cases where a person transacted the business of another during his absence (cum quis negotia absentis gesserit), or without a commission of authority (sine mandato). Inst. 3. 28. This was of two kinds—a direct action, which

lay for the person whose business had been transacted, against him who had transacted it (domino rei gestae adversus eum qui gessit), and a cross action, which lay for the negotiorum gestor, as he was called, against the other. Id.; Heinec. Elem. Jur. Civ. lib. 3, tit. 28, §§ 973, 974. See "Negotiorum Gestio."

This action is enumerated by Bracton and Fleta among actions arising quasi ex contractu, or ex quasi contractu. Bracton, fol. 100b; Fleta, lib. 2, c. 60, § 1.

ACTIO NON.

In pleading. The declaration in a special plea "that the said plaintiff ought not to have or maintain his aforesaid action thereof against" the defendant (in Latin, action non habere debet).

It follows immediately after the statement of appearance and defense. 1 Chit. Pl. 531; 2 Chit. Pl. 421; Steph. Pl. 394.

ACTIO NOMINATAE.

(Lat. a named action). In English law. A writ for which there was a precedent in the English chancery prior to St. 13 Edw. 1. (Westminster II.) c. 34.

The clerks would make no writs except in such actions prior to this statute, according to some accounts. 17 Serg. & R. (Pa.) 195.

ACTIO NON ACCREVIT INFRA SEX ANNOS.

(Lat.) The action did not accrue within six years.

In Pleading.

A plea of the statute of limitations, by which the defendant insists that the plaintiff's action has not accrued within six years. It differs from non assumpsit in this: Non assumpsit is the proper plea to an action on a simple contract, when the action accrues on the promise; but when it does not accrue on the promise, but subsequently to it, the proper plea is actio non accrevit, etc. Lawes, Pl. 733; 5 Bin. (Pa.) 200, 203; 2 Salk. 422; 1 Saund. 33, note 2; 2 Saund. 63b.

ACTIO NON DATUR NON DAMNIFICO.

An action is not given to one who is not injured. Jenk. Cent. Cas. 69.

ACTIO NON FACIT REUM, NISI MENS SIT REA.

An action does not make one guilty unless the intention be bad. Lofft, 37.

ACTIO NON ULTERIUS.

(Lat.) In English pleading. A name given to the distinctive clause in the plea to the further maintenance of the action, introduced in place of the plea puis darrein continuance; the averment being that the plaintiff ought not further (ulterius) to have or maintain his action. Steph. Pl. 64, 65, 401.

ACTIO NOXALIS.

In the civil law. A noxal action; an action which lay against a master for a crime committed or injury done by his slave, and in which the master had the alternative either to pay for the damage done or to deliver up the slave to the complaining party. Inst. 4. 8. pr.; Heinec. Elem. Jur. Civ. lib. 4, tit. 8; Halifax, Anal. bk. 3, c. 2. So called from noxa, the slave or offending person, or noxia, the offense or injury itself. Inst. 4. 8. 1.

ACTIO PERPETUA.

In the civil law. A perpetual or unlimited action; one not limited to any particular period within which it should be brought. Inst. 4. 12. pr. The opposite of the actio temporalis (q. v.)

ACTIO PERSONALIS.

A personal action. The proper term in the civil law is actio in personam.

ACTIO PIGNORATICIA.

In the civil law. An action of pledge; an action founded on the contract of

pledge (pignus). Dig. 13. 7; Code, 4. 24.

ACTIO POENAE PERSECUTORIA.

In the civil law. An action prosecuted for a penalty only, and not for a specific thing. Inst. 4. 6. 16. 18.

ACTIO POENALIS.

In the civil law. A penal action; an action brought to enforce the payment of a private penalty. 1 Mackeld. Civ. Law, p. 193, § 196.

ACTIO PRAEJUDICIALIS.

In the civil law. A preliminary or preparatory action; an action brought for the determination of some point or question arising in another or principal action, and so called from its being determined before (prius, or prae judicari) the principal action could proceed. Bracton, 104a; Cowell. Of this nature were actions for determining a man's civil state or condition, as whether he was a freeman or a slave, legitimate or illegitimate. Inst. 4. 6. 13; Heinec. Elem. Jur. Civ. lib. 4, tit. 6, § 1142; Halifax, Anal. bk. 3, c. 1, note 14.

ACTIO PRAESCRIPTIS VERBIS.

In civil law. A form of action which derived its force from continued usage or the responsa prudentium, and was founded on the unwritten law. 1 Spence, Eq. Jur. 212.

The distinction between this action and an actio in factum is said to be that the latter was founded, not on usage or the unwritten law, but by analogy to or on the equity of some subsisting law. 1 Spence, Eq. Jur. 212.

ACTIO PRAETORIA.

In the civil law. A praetorian action; one introduced by the praetor, as distinguished from the more ancient actio civilis. Inst. 4. 6. 3; 1 Mackeld. Civ. Law, p. 189, § 194.

ACTIO PRO SOCIO.

In the civil law. An action for a copartner; an action which one copartner (socius) might have against another. Dig. 17. 2; Code. 4. 37.

ACTIO PROPRIA.

An action brought for the recovery of a several thing (res propria), as distinguished from a thing held in common. Bracton, fol. 103a.

ACTIO PUBLICIANA.

In the civil law. An action which lay for one who had lost a thing of which he had bona fide obtained possession before he had gained a property (dominium) in it, in order to have it restored, under color that he had obtained a property in it by prescription. Inst. 4. 6. 4; Dig. 6. 2.; Heinec. Elem. Jur. Civ. lib. 4, tit. 6, § 1131; Halifax, Anal. bk. 3, c. 1, note 9. It was an honorary action, and derived its name from the practor Publicius, by whose edict it was first given. Inst. 4. 6. 4.

ACTIO QUANTI MINORIS.

In the civil law. An action given to a purchaser who has paid more for a thing than it was intrinsically worth, to recover back so much of the price as the thing was of less value (quanti minoris), or fell short in value, by reason of the defect. Poth. Cont. pt. 2, c. 1, § 4, art. 5; 1 Kames. Eq. 271.

ACTIO QUOD JUSSU.

In the civil law. An action given against a master, founded on some business done by his slave, acting under his order (jussu.) Inst. 4. 7. 1; Dig. 15. 4; Code, 4. 26.

ACTIO QUOD METUS CAUSA.

In the civil law. An action granted by unlawful force, or fear (metus causa) that was not groundless (metus probabilis or justus), to deliver, sell, or promise a thing to another. Bracton, fol. 103b; 1 Mackeld. Civ. Law, p. 120, § 216.

ACTIO (OR INTERDICTUM) QUOD VI AUT CLAM.

In the civil law. An action which lay where one forcibly or clandestinely (vi aut clam) erected or demolished a building on his own or another's ground, and thereby unlawfully injured another; its object being to get everything restored to its former condition, and to obtain damages. Dig. 43. 24. 1. Bracton gives this action a place in his system of remedies. defining it as one which lay against him who had erected or prostrated a building on another's land, and concealed himself in order to avoid being prevented from doing it (et se occultavit, ne sibi prohiberetur), and observes that the offender might by this action be compelled to restore everything to its former state, at his own expense. Bracton, fols. 103b, 104a.

ACTIO REI PERSECUTORIA.

In the civil law. An action for the recovery of a specific thing (rei persequendae cause comparata) or damages; as distinguished from the actio poenae persecutoria, and the actio mixta. Inst. 4. 6. 16. 17; 1 Mackeld. Civ. Law, p. 192, § 196.

ACTIO RERUM AMOTARUM.

In the civil law. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce (divortii consilio.) Dig. 25. 2; Id. 25. 2. 25. 30. It also lay for the wife against the husband in such cases. Id. 25. 2. 7. 11; Code, 5, 21.

ACTIO SEPULCHRI VIOLATI.

In the civil law. An action for violating a grave. Dig. 47. 12; Code, 9. 19.

ACTIO SERVIANA.

In the civil law. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. Inst. 4. 6. 7; Heinec. Elem. Jur. Civ. lib. 4, tit. 6, § 1139; Halifax, Anal. bk. 3, c. 1, note 12.

ACTIO SPECIALIS.

In the civil law. A special action; an action brought to enforce the delivery of one of several single things. 1 Mackeld. Civ. Law, p. 193, § 196; Dig. 6. 1. 1.

ACTIO STRICTI JURIS.

(Lat. an action of strict right.) An action in which the judge followed the formula that was sent to him closely, administered such relief only as that warranted, and admitted such claims as were distinctly set forth by the pleadings of the parties. 1 Spence, Eq. Jur. 218.

ACTIO TEMPORALIS.

In the civil law. A temporary action; an action limited to a certain time, within which it was to be instituted, on pain of losing it; the opposite of actio perpetua (q. v.) Inst. 4. 12.

ACTIO TRIBUTORIA.

In the cvil law. An action for distribution (Lat. tribuere, to distribute); an action which lay for the creditor of a son or slave, who had traded upon his peculium, with the knowledge of his father or master, to obtain from the latter a distributive or proportionate share of the goods traded in (peculiares merces), or their proceeds. Inst. 4. 7. 3; Heinec. Elem. Jur. Civ. lib. 4, tit. 7, § 1217; Halifax, Anal. bk. 3, c. 2, note 6.

ACTIO (OR INTERDICTUM) UNDE VI.

In the civil law. An action or interdict which lay to recover possession of an immovable thing, as land, of which one had been deprived by force. So called from the formal words in it,—unde tu illum vi dejecisti, from which you

This definition is adopted by Mr. Taylor (Tayl. Civ. Law, p. 50.) In modern usage, the signification of the right of pursuing has been generally dropped, though it is recognized by Bracton (98b), Coke (2d Inst. 40), and Blackstone (3)

have ejected him by force. Gaius, Inst. iv. 154; Inst. 4. 15. 6; Dig. 43. 16. It resembled the modern action of ejectment, and is adopted by Bracton in his system of actions. Bracton, fol. 103b.

ACTIO UTILIS.

An action for the benefit of those who had the beneficial use of property, but not the legal title; an equitable action. 1 Spence, Eq. Jur. 214.

ACTIO VI BONORUM RAPTORUM.

In the civil law. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables (bona) had been taken from him by force (vi), to recover the things so taken, together with a penalty of triple the value. Inst. 4. 2; Id. 4. 6. 19. Bracton describes it as lying de rebus mobilibus vi abiatis sive robbatis, for movable things taken away by force, or robbed. Bracton, fol. 103b.

ACTION.

(Lat. agrere, to do; to lead; to conduct.) A doing of something; something done.

The term is, in legal usage, confined to practice, having no technical meaning, in the substantive law, except in the French law, in which it denotes shares in a company, or stock in a corporation.

It signifies the formal demand of one's right from another person or party made and insisted on in a court of justice.

In Justinian's Institute, "action" was defined as the right of pursuing in a court of justice what was due one's self. Inst. 4. In the Digest, however, it was defined as the right of pursuing, the pursuit itself, or exercise of this right, or the form of proceedings by which it was exercised. Dig. 50. 16. 16; Id. 1. 2. 10. This definition is adopted by Mr. Taylor (Tayl. Civ. Law, p. 50.) In modern usage, the signification of the right of pursuing has been generally dropped, though it is recognized by Bracton (98b), Coke (2d Inst. 40), and Blackstone (3

Comm. 116), while the two latter senses, of the exercise of the right, and the means or method of its exercise, are in general use.

The vital idea of an action is a proceeding on the part of one person as actor against another, for the infringement of some right of the first, before a court of justice, in the manner prescribed by the court or the law. Subordinate to this is now connected in a quite common use the idea of the answer of the defendant or person proceeded against; the adducing evidence by each party to sustain his position; the adjudication of the court upon the right of the plaintiff; and the means taken to enforce the right, or recompense the wrong done, in case the right is established and shown to have been injuriously affected. 3 How. Pr. (N. Y.) 318.

All proceedings in the court up to the final termination of the litigation, whether instituted by a party, by a third person, or by the court of its own motion, are part of the action, if incidental; the principal remedy constituting the action, and founded on its existence. Even when regulated by special statute, such proceedings are considered proceedings in the action, and not special proceedings, except where the statutes otherwise declare, or the papers are so entitled as to forbid their being so treated.

As distinguished from "suit," the word "action" is generally applied to proceedings at law, and "suit" to proceedings in equity. 9 Barb. (N. Y.) 300.

Actions are to be distinguished from those proceedings, such as writ of error, scire facias, mandamus, and the like, where, under the form of proceedings, the court, and not the plaintiff, appears to be the actor. 6 Bin. (Pa.) 9.

Actions are classified as (1) in the civil law, or (2) in the common law.

(1a) Civil Actions in the Civil Law.

Those personal actions which are instituted to compel payments, or do some other thing purely civil. Poth. Introd. Gen. aux Coutumes, 110.

(1b) Criminal Actions in the Civil Law.

Those personal actions in which the plaintiff asks reparation for the commission of some tort or injury which he or those who belong to him have sustained.

(1c) Mixed Actions in the Civil Law.

Those which partake of the nature of both real and personal actions; as actions of partition; actions to recover property and damages. Inst. 4. 6. 18-20; Domat, Supp. Civ. Law, liv. 4, tit. 1, note 4.

(1d) Mixed Personal Actions in the Civil

Those which partake of both a civil and a criminal character.

(1e) Personal Actions in the Civil Law.

Those in which one person (actor) sues another as defendant (reus) in respect of some obligation which he is under to the actor, either ex contractu or ex delicto, to perform some act or make some compensation.

(1f) Real Actions in the Civil Law.

Those by which a person seeks to recover his property, which is in the possession of another.

(2a) Civil Actions in the Common Law.

Those actions which have for their object the recovery of private or civil rights, or of compensation for their infraction.

(2b) Criminal Actions in the Common Law.

Those actions prosecuted in a court of justice, in the name of the government, against one or more individuals accused of a crime. See 1 Chit. Crim. Law.

(2c) Local Actions in the Common Law.

Those civil actions the cause of which could have arisen in some particular place or county only.

(2d) Mixed Actions in the Common Law.

Those which partake of the nature of both real and personal actions.

(2e) Personal Actions in the Common Law.

Those civil actions which are brought for the recovery of personal property, for the enforcement of some contract, or to recover damages for the commission of an injury to the person or property.

(21) Real Actions in the Common Law. Those brought for the specific recovery of lands, tenements, or hereditaments. Steph. Pl. 3.

(2g) Transitory Actions in the Common Law.

Those civil actions the cause of which might have arisen in one place or county as well as another.

Comprehensive Sense-Suit Synonymous.

In a comprehensive sense and as a general rule the words "suit" and "action" are synonymous, and are used interchangeably to mean any legal proceeding in a court for the enforcement of a right. Brand v. Brand, 252 Ill. 139.

Practice Act, "Cause of Action" Distinguished.

Section 23 of the Practice Act of 1874, now section 39 of the Practice Act (J. & A. 8576), relating to amendments, uses the word "action" as meaning the particular suit in which such amendment is made, and not in the sense of "cause of action." Fish v. Farwell, 160 Ill. 250.

A cause of action includes not only a right of recovery but also a right to bring the action to recover. Means v. Terminal Railroad Association of St. Louis, 202 Ill. App. 591.

Suit in Equity Not Included.

Section 52 of the Practice Act (J. & A. 8589) providing that no person shall be permitted to deny on trial the execution of any instrument in writing, upon which any "action" may have been brought, etc., applies only to actions at law and not to suits in chancery. Clokey v. Loan, etc., Ass'n, 120 Ill. App. 217.

Suit in Equity Not Included.

The term "action" is never properly applied to a suit in equity. Mahar v.

O'Hara, 9 Ill. 429; Clokey v. Loan, etc., Ass'n, 120 Ill. App. 217. But compare Brand v. Brand, 252 Ill. 139, where it was held that the definition in Mahar v. O'Hara, supra, was only correct in a narrow sense, applicable only where there is nothing requiring a different construction.

ACTION AT LAW.

Election Contest.

A proceeding to contest an election is not an action at law. Devous v. Gallatin County, 244 Ill. 44.

Mandamus.

A mandamus proceeding is an action at law. People v. Board of Trade, 193 Ill. 580; People v. Crabb, 156 Ill. 164; Dement v. Rokker, 126 Ill. 190; People v. Weber, 86 Ill. 285; People v. Glann, 70 Ill. 233.

ACTIONS EX CONTRACTU.

Appellate Court Act—Action on Fire Insurance Policy Included.

The expressions "actions ex contractu," used in section 8 of the Appellate Court Act (J. & A. 2968), includes an action on a policy of fire insurance. Clinton, etc., Co. v. Zeigler, 201 Ill. 273.

Bastardy Process Not Included.

The expression "actions ex contractu," used in section 8 of the Appellate Court Act (J. & A. 2968), does not include the special remedy provided by the Bastardy Act (J. & A. 703 et seq.). Scharf v. People, 134 Ill. 242 (disregarding Rawlings v. People, 102 Ill. 479).

Refers to Nature of Action.

The expression "actions ex contractu"—meaning all causes of action arising ex contractu as contradistinguished from those arising ex delicto, whether at law or in equity—used in section 8 of the Appellate Court Act (J. & A. 2968), refers to the nature of the cause of action rather than to the form of the proceeding for its enforcement. Clinton, etc., Co. v. Zeigler, 201 Ill. 373; Umlauf v. Umlauf,

103 Ill. 653. To a similar effect see Barber v. Pittsburg, C. & St. R. Co., 93 Ill. 353.

ACTIONS EX DELICTO.

Appellate Court Act—Actions Involving Penalty.

Every civil action for the recovery of a penalty, in whatever form, must be treated as an ex delicto for the purpose of determining the right of appeal under section 8 of the Appellate Court Act (J. & A. 2968). Umlauf v. Umlauf, 103 Ill. 654.

ACTION FOR MONEY HAD AND RECEIVED.

A liberal action, in which the plaintiff waives all tort, trespass and damages, and claims only the money which the defendant has actually received. Law v. Uhrlaub, 104 Ill. App. 265.

ACTION IN FORCIBLE DETAINER.

As Action at Law.

An action in forcible detainer is an action at law. O'Brien v. O'Brien, 195 Ill. App. 347.

ACTION OF A WRIT.

A phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter. Cowell.

ACTION OF ABSTRACTED MULTURES.

In Scotch law. An action for multures or tolls against those who are thirled to a mill, i. e., bound to grind their corn at a certain mill, and fail to do so. Bell, Dict.

ACTION OF ADHERENCE.

In Scotch law. An action competent to a husband or wife, to compel either

party to adhere in case of desertion. It is analogous to the English suit for restitution of conjugal rights. Wharton.

ACTION OF ASSUMPSIT.

An action devised for the purpose of recovering damages for the non performance of a parol or simple contract. Highway Commissioners v. Bloomington, 253 Ill. 171.

ACTION OF BOOK DEBT.

A form of action resorted to in the states of Connecticut and Vermont for the recovery of claims, such as usually evidenced by a book account. 1 Day (Conn.) 105; 4 Day (Conn.) 105; 2 Vt. 366. See 1 Conn. 75; 11 Conn. 205.

ACTION OF FORCIBLE DETAINER.

A summary statutory for the restoration of the possession of land to one who has been wrongfully kept out or deprived of such possession. U. S., etc., Co. v. Pochek, 195 Ill. App. 370.

ACTION ON A NOTE.

Negotiable Instruments Act.

An action to recover on a promissory note is an "action on a note," within the meaning of section 9 of the Negotiable Instruments Act (J. & A. 7630) although against a guarantor instead of against the maker, and although a written agreement in relation to the note was executed contemporaneously with the making of the note, the note being a commercial instrument, complete in itself, and the special contract being matter of defense. Ewen v. Wilbor, 208 Ill. 501.

ACTION ON THE CASE.

An action based upon very general principles, and designed to afford relief in all cases where one is injured by the wrongful act of another and where no other remedy is provided. Gillespie v. Hughes, 86 Ill. App. 211.

ACTIONABLE.

For which an action will lie. 3 Bl. Comm. 23.

ACTIONABLE NEGLIGENCE.

Negligence which constitutes a good cause of action; a want of ordinary care and skill in respect to a person to whom the defendant is under an obligation or duty to use ordinary care and skill. Gibson v. Leonard, 143 Ill. 189; Kinnare v. Klein, 88 Ill. App. 313.

The failure of the defendant to discharge some duty he owed the plaintiff, by which failure the injury complained of was occasioned. Western, etc., Works v. Stachnick, 102 Ill. App. 425.

Elements.

The elements of actionable negligence are, first, a duty imposed by law to exercise care in favor of the person for whose benefit the duty is imposed; second, the failure to perform that duty; and third, a consequent injury so connected with the failure to perform the duty that the failure is the proximate cause of the injury. Hartnett v. Boston Store, 265 Ill. 333. To a similar effect see McAndrews v. Chicago, L. S. & E. Ry. Co., 222 Ill. 236.

ACTIONABLE NUISANCE.

Anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights. North Shore S. Ry. Co. v. Payne, 192 Ill. 245.

ACTIONS IN TORT.

Justices and Constables Act—Action to Recover Fine Included.

The expression "actions in tort," used in section 83 of the Justices and Constables Act of 1847, now section 3 of article 11 of the Justices and Constables Act (J. & A. 6981) (the expression there being "action in tort"), includes a proceeding to recover a fine for violation of an ordinance. Brown v. Jerome, 102 Ill. 373.

ACTIVE.

Where the trust is of such a character that the trustee is required to convey the estate, the trust is an active one. Silverman v. Kristufek, 162 Ill. 228.

ACTIVE BUSINESS.

Corporation Act.

The term "active business," as used in sections 2 and 7 of the act of 1901 (J. & A. 2668, 2673), requiring corporations to report annually to the Secretary of State, means the doing of those things which the corporation is authorized to do by its charter. People v. Rose, 207 Ill. 375.

ACTIVE MILITIA.

Of State.

The "active militia" of a state is simply a reserve force, that the executive is authorized by the constitution to call to his aid in case of a sudden emergency,—to execute the laws, suppress insurrection and repel invasion. Dunne v. People, 94 Ill. 137.

ACTIVE TRUST.

A trust where the trustee is not merely a passive depositary of the estate, but is required to take active measures to carry into effect the general intention of the creator of the trust. Matthern v. Rankin, 228 Ill. 323.

A trust in which control is to be exercised or duty to be performed by the trustee, or when he is to exercise discretion in the management of the estate or in the investment of the proceeds of the property. Harris v. Ferguy, 207 Ill. 538; Bennett v. Bennett, 66 Ill. App. 37. To a similar effect see Hart v. Seymour, 147 Ill. 611; Kellogg v. Hale, 108 Ill. 168; Meacham v. Steele, 93 Ill. 146.

Trust to Collect and Pay Rents and Profits.

A conveyance to a trustee to take and collect the rents and profits, keep the premises in repair, pay taxes, assessments and charges, pay the residue of the rents and profits to the cestui que trust during her life and to convey the premises to such person or persons as the cestui que trust may, by will, appoint, creates an active trust. McFall v. Kirkpatrick, 236 Ill. 294.

ACTON BURNELL.

An ancient English statute, so called because enacted by a parliament held at the village of Acton Burnell.

It is otherwise known as statutum mercatorum or de mercatoribus, the statute of the merchants. It was a statute for the collection of debts, the earliest of its class, being enacted in 1283.

A further statute for the same object, and known as De Mercatoribus, was enacted 13 Edw. I. c. 3.

ACTOR.

(Lat. agere.) In civil law.

(1) A patron, pleader, or advocate. Du Cange; Cowell; Spellman.

Actor ecclesiae was an advocate for a church; one who protects the temporal interests of a church. Actor villae was the steward or head bailiff of a town or village. Cowell.

- (2) One who takes care of his lord's lands. Du Cange.
- (3) A guardian or tutor; one who transacts the business of his lord or principal; nearly synonymous with "agent," which comes from the same word.

The word has a variety of closely related meanings, very nearly corresponding with "manager." Thus, actor dominae, manager of his master's farms; actor ecclesiae, manager of church property; actores provinciarum, tax gatherers, treasurers, and managers of the public debt.

(4) A plaintiff; contrasted with reus, the defendant. Actores regis, those who claimed money of the king. Du Cange; Spelman; Cowell.

ACTS OF COURT.

Legal memoranda made in the admiralty courts in England, in the nature of

pleas. For example, the English court of admiralty disregards all tenders except those formally made by acts of court. Abb. Shipp. 403; Dunlop, Adm. Prac. 104, 105; 4 C. Rob. Adm. 103; 1 Hagg. Adm. 157.

ACTS OF OWNERSHIP.

Instruction.

It is not error to instruct the jury, in an action involving the title to land, that acts of ownership are "such acts of dominion and proprietorship over the land as were proper to the condition and character thereof, and such open conduct with respect thereto as would ordinarily be exercised by the owner thereof." Gage v. Eddy. 179 Ill. 505.

ACTS OF SEDERUNT.

In Scotch law. Ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have the power by virtue of a Scotch act of parliament passed in 1540. Ersk. Princ. bk. 1, tit. 1 § 14.

ACTUAL.

"Exclusive," "Open," "Outward," "Substantial," "Visible," Synonymous.

The terms "outward," "open," "actual," "visible," "substantial," and "exclusive," as applied to the change of possession of personal property required to make a sale effective against creditors of the vendor, mean, substantially the same thing, and are equivalent to "not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve or disguise; in full existence, denoting that which not merely can be but is, opposed to potential, apparent, constructive and imaginary; veritable, genuine, certain, absolute; real, at present time, as a matter of fact; not merely nominal; opposed to form; actually existing; true; not including, admitting or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 Ill. App. 318.

Possession of Land.

Possession of land is actual where there is an occupancy, such as the property is capable of, according to its adaption to use. Morrison v. Kelly, 22 Ill. 624.

ACTUAL ANNEXATION.

Fixtures—Includes Every Mode of Annexation.

By "actual annexation," as applied to fixtures, is understood every mode by which a chattel can be joined or united to the freehold. Merchants L. & T. Co. v. Merchants S. D. Co., 167 Ill. App. 321.

ACTUAL CASH VALUE.

The fair and reasonable cash price for which property can be sold in the market. Conness v. Indiana, I. & I. R. Co., 193 Ill. 474; Birmingham, etc., Co. v. Pulver, 126 Ill. 337; Shrigley v. Chicago & E. I. Ry. Co., 158 Ill. App. 477.

The price which property will bring in a fair market, after fair and reasonable efforts have been made to find the purchaser who will give the highest price. Birmingham Fire Ins. Co. v. Pulver, 126 Ill. 337.

"Fair Cash Value" Synonymous.

The expressions "actual cash value," and "fair cash value," as applied to property, are synonymous. Conness v. Indiana, I. & I. R. Co., 193 Ill. 474; Birmingham, etc., Co. v. Pulver, 126 Ill. 337; Shrigley v. Chicago & E. I. Ry. Co., 158 Ill. App. 477.

ACTUAL EVICTION.

An eviction where there is a physical expulsion. Leiferman v. Osten, 167 Ill. 98.

An actual expulsion of the tenant out of all or some part of the demised premises; a physical ouster or dispossession from the very thing granted, or some substantial part thereof. Patterson v. Graham, 40 Ill. App. 402.

ACTUAL EYE WITNESS.

Accidental Insurance—Includes Insured.

A policy of accident insurance providing that a certain measure of recovery

be had in case of accident by shooting where the facts are not established by the testimony of an "actual eye witness" does not mean, by the quoted expression, one who saw the load leave the gun, nor does it exclude anyone who may testify to a matter in issue, thus including the insured, able to testify. National, etc., Co. v. Ralstin, 101 Ill. App. 193.

ACTUAL FORCE.

Forcible Entry and Detainer Act—Refers to Violate Acts.

The definition of the word "force" as used in section 1 of the Forcible Entry and Detainer Act (J. & A. 5842), as "actual force," means, by the last quoted expression, breaking open doors or other like violent acts. Fort Dearborn Lodge v. Klein, 115 Ill. 186; Parrott v. Hodgson, 46 Ill. App. 231.

ACTUAL FRAUD.

Deception practiced in order to induce another to part with property or to surrender some legal right and which accomplishes the end designated. Haas v. Sternbach, 156 Ill. 55.

Intentional fraud. Blake v. Thwing, 185 Ill. App. 187.

What Constitutes.

Representations that an option has been obtained for land at a certain price, when, in fact, a rebate was to be made therefrom, upon which representations others rely in entering into an agreement for the purchase of the land jointly with those making such representations, constitutes a fraud. Bunn v. Schnellbacher, 163 Ill. 328.

ACTUAL LEVY.

On Goods.

An "actual levy" upon goods, consists in the taking such possession thereof as is practicable, in view of the nature and character of the property. People v. Goss, etc., Co., 99 Ill. 362.

ACTUAL NOTICE.

Ejectment Act.

The "actual notice" of adverse claim, required by section 47 of the Ejectment Act of 1845, now section 52 of the Ejectment Act (J. & A. 4714), relating to evictions where defendant shows title deduced from public record, is notice either by the commencement of a suit, or by giving a copy of the entry or patent from which the proprietor derives title, to the adverse party. Ross v. Irving, 14 Ill. 178.

ACTUAL OCCUPANT.

Ejectment Act—Source of Possession Immaterial.

One shown to occupy certain rooms in a building which is the subject of an ejectment suit is an "actual occupant," within the meaning of section 6 of the Ejectment Act (J. & A. 4668), providing that such occupant be made a party of the suit, although it does not appear from whom such occupant got possession, whether he paid rent, or how long he occupied. Glos v. Patterson, 204 Ill. 542.

ACTUAL OR POSITIVE FRAUD.

Broad Meaning.

"Actual or positive fraud," in its most general and fundamental conception, consists in obtaining an undue advantage by means of some act or omission which is unconscientious or a violation of good faith in the broad meaning given to the term by equity,—bona fides of the Roman Law. Allen v. U. S., etc., Co., 269 Ill. 243.

What Expression Includes.

Fraud includes cases of the intentional and successful employment of any cunning, deception or artifice used to circumvent, cheat or deceive another. Wheeler, etc., Co. v. Barr, 131 Ill. App. 656; Chicago, etc., Co. v. Mommsen, 107 Ill. App. 357.

ACTUAL POSSESSION.

Land—Enclosure by Fence Unnecessary.

To constitute actual possession of land it is not necessary that the land be en-

closed by a fence, if the land is appropriated to individual use in such a way as to apprise all persons in the vicinity who has the exclusive use and enjoyment. Kerr v. Hitt, 75 Ill. 60.

Land-How Obtained.

Actual possession of land may arise by acts of ordinary husbandry, that indicate an exclusive use and control, and even by cutting timber upon it, or by any other acts that manifest an exclusive appropriation to one's own use. Kerr v. Hitt, 75 Ill. 60.

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Actual possession of land may arise in different ways, as by entering upon and improving the same with the intention of appropriating the land to any ordinary or useful purpose-agricultural or otherwhich, in their nature, in connection with the claim of right, indicate an exclusive use and control of the property; by erecting buildings; by breaking prairie for cultivation; by inclosure; by opening shafts for raising coal, or ore, quarries for obtaining rock, and using them to the exclusion of others; by the use and control of timber land belonging to a farm or homestead, although disconnected therewith, for ordinary supply of wood or timber for such farm or homestead. Brooks v. Bruyn, 18 Ill. 542.

Land—Visible and Exclusive Appropriation.

The visible and exclusive appropriation of a part of a tract of land, claiming the whole, under color of title, is, in law, an actual possession of the entire tract, except so far as there may be adverse possession. Downing v. Mayes, 153 Ill. 335; St. L., A. & T. H. R. R. Co. v. Nugent, 152 Ill. 121; Lancey v. Brock, 110 Ill. 612; Brooks v. Bruyn, 18 Ill. 542.

ACTUAL POSSESSION OR OCCUPANCY.

Revenue Act—"Possession" and "Occupancy" Convertible.

The expression "actual possession or occupancy," used in section 216 of the Revenue Act (J. & A. 9435), as descriptive of the person to whom notice is to

be given by the purchaser at a tax sale, uses the words "possession" and "occupancy" as convertible, and the word "actual" to qualify each. Walker v. Converse, 148 Ill. 630; Taylor v. Wright, 121 Ill. 466.

Stacking Hay on Land Not Included.

The owner of hay stacked on land by permission of the tenant to whom no rent is paid for the privilege, other than by giving the tenant some hay, not accepted as rent, and by allowing tenant's cows to eat of the hay, as they ran around the stack, is not in "actual possession or occupancy" within the meaning of section 216 of the Revenue Act (J. & A. 9435) relating the notice to be given to entitle a tax buyer to a deed. Drake v. Ogden, 128 Ill. 608.

Temporary Entries Not Included.

Entries upon land which are merely temporary, and made without claim of right, or with the intention of excluding others therefrom, such as camping thereon, or leaving a chattel thereon, or occasionally leaving a haystack thereon, do not constitute actual possession within the meaning of section 216 of the Revenue Act (J. & A. 9435), relating to notice to be given to the person in "actual possession or occupancy" of land sold for taxes, so as to change the character of vacant land to that of land actually possessed or occupied. Walker v. Converse, 148 Ill. 630.

ACTUAL RESIDENCE.

Limitation Act.

Although a party may derive his title to different tracts of land from different sources, yet if the tracts adjoin each other and are all in one enclosure, and there is no one but the owner residing thereon, such residence is an "actual residence" upon all the tracts, within the meaning of section 8 of the Limitations Act of 1835, now section 4 of the Limitations Act (J. & A. 7199). Wharton v. Bunting, 73 Ill. 19.

ACTUAL TOTAL LOSS.

In marine insurance the complete destruction of the insured vessel, so that it cannot be recovered or repaired, as distinguished from constructive total, which authorizes an abandonment to the underwriters. 25 Ohio St. 64.

ACTUAL VALUE.

"Assessed Value" Distinguished.

"Actual value" and "assessed value" are quite different terms. Chicago B. & Q. R. Co. v. Siders, 88 Ill. 325.

ACTUALLY.

In fact; really; in truth. Crouch v. First, etc., Bank, 156 Ill. 357.

AD.

A Latin word, definable as "to." People v. Goss, etc., Co., 99 Ill. 361.

AD DAMNUM.

That part of the plaintiff's pleading in which he alleges the amount for which he claims recovery. Kieper v. American, etc., Co., 187 Ill. App. 140.

AD EXITUM.

(Lat.) At the end of the pleadings; at issue. Steph. Pl. 24.

AD FACTUM PRAESTANDUM.

In Scotch law. The name given to a class of obligations of great strictness.

A debtor ad fac. praces, is denied the benefit of the act of grace, the privilege of sanctuary, and the cessio bonorum. Ersk. Inst. lib. 3, tit. 3. § 62; Kames, Eq. 216.

AD JURA REGIS.

To the rights of the king; a writ which was brought by the king's clerk; presented to a living, against those who endeavored to eject him, to the prejudice of the king's title. Reg. Writs, 61.

AD SECTAM.

At the suit of.

It is commonly abbreviated. It is used where the defendant is filing his papers; of the defendant first, as in some cases where the defendant is filling his papers; thus, Roe ads. Doe, where Doe is plaintiff and Roe defendant. It is found in the indexes to cases decided in some of our older American books of reports, but has become pretty much disused.

ADDITIONAL SERVITUDE.

Elevated Railroad.

An elevated railroad constructed in a street the fee of which is in the city does not subject the street to an additional servitude. Doan v. Lake Street E. R. Co., 165 Ill. 517.

Erections on Street.

Erections upon a public street impose no additional servitude, where they aid and facilitate its use for the purpose of travel and transportation. Chicago, B. & Q. R. Co. v. West Chicago R. Co., 156 Ill. 268.

Telegraph Line.

A telegraph line is an additional servitude on a highway where the public merely has an easement. Carpenter v. Capital, etc., Co., 178 Ill. 34; Postal, etc., Co. v. Eaton, 170 Ill. 518; Chicago, B. & Q. R. Co. v. West Chicago S. R. Co., 156 Ill. 268; Board of Trade, etc., Co. v. Barnett, 107 Ill. 516.

Telephone Line.

A telephone line of an ordinary local exchange in a city, town or village or in a rural highway is an additional servitude where the fee is in the abutting owners. DeKalb, etc., Co. v. Dutton, 228 Ill. 182; Burrall v. American, etc., Co., 224 Ill. 268.

Steam Railroad.

A steam railroad, as ordinarily operated, is an additional servitude. Chicago, B. & Q. R. Co. v. West Chicago R. Co., 156 Ill. 268,

ADDRESS.

In Equity Pleading.

That part of a bill which contains the appropriate and technical description of the court where the plaintiff seeks his remedy. Coop. Eq. Pl. 8; Bart. Suit in Eq. 26; Story, Eq. Pl. § 26; Van Heythuysen, Eq. Draft. 2.

In Legislation.

A formal request addressed to the executive by one or both branches of the legislative body, requesting him to perform some act.

ADDUCE.

To offer; present; allege; advance; cite; name; mention; quote. Brown v. Griffin, 40 Ill. App. 559.

ADEEMED.

As Applied to Legacy.

The word "adeemed," as applied to a legacy, means "taken away." Meily v. Knox, 191 Ill. App. 140.

ADEMPTION.

The extinction of a specific legacy by the testator's parting with the subject thereof during his life. Also applied to the payment by the testator during his life of a general legacy; but this is more properly known as "satisfaction." 9 Barb. (N. Y.) 35; 3 Duer (N. Y.) 477.

The term is not applied to devises. 108 N. Y. 535.

Literal Meaning.

The term "ademption" literally means removal or extinction. Tanton v. Keller, 167 Ill. 139.

Original Application of Term.

The term "ademption" applied originally to specific legacies, and the rule was that where a specific article is bequeathed, such as a bale of wool or a piece of cloth, which does not exist at the time of testator's death, there is an ademption of the bequest. Tanton v. Keller, 167 Ill. 139.

ADHERENCE.

In Scotch law. The name of a form of action by which the mutual obligation of marriage may be enforced by either party. Bell, Dict.

ADHERING.

(Lat. adhaerere, to cling to.) Cleaving to, or joining; or, adhering to the enemies of the United States.

The constitution of the United States, (article 3, § 3) defines treason against the United States to consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

A citizen's cruising in an enemy's ship, with a design to capture or destroy American ships, would be adhering to the enemies of the United States. 4 How. St. Tr. 328; Salk. 634; 2 Gilb. Ev. (Lofft Ed.) 798.

ADIATION.

A term used in the laws of Holland for the application of property by an executor. Wharton.

ADIEU.

(Law Fr. without day.) A common term in the Year Books, implying final dismissal from court. Literally, "to God." Frequently written "Adeu." Y. B. T. 5 Edw. II. 173.

ADIRATUS.

Lost; strayed; a price or value set upon things stolen or lost, as a recompense to the owner. Cowell.

ADJACENT.

To lie near; close or contiguous; adjoining; near; in the neighborhood or vicinity of. Chicago & N. W. Ry. Co. v. Mechanics' Institute, 239 Ill. 209; People v. Keechler, 194 Ill. 240. See also Gath v. Interstate, etc., Co., 170 Ill. App. 616 (quoting part of definition).

Lands.

Lands are "adjacent" when the two bodies, taken together, form a compact tract. Dickey, J., dissenting opinion. Chicago & N. W. Ry. Co. v. Mechanics' Institute, 239 III. 225.

Right of Way Including Line.

It is a contradiction in terms to say that a right of way which lies on both sides of a given line, and is located over and upon and includes that line, and touches it upon both sides, is adjacent to such line. Tudor v. Chicago, etc., R. Co., Ill. 27 N. E. 917.

Statute—Relative Term.

When used in a statute, the word "adjacent" has no arbitrary meaning or definition, which must be determined by the object sought to be accomplished by the statute. Chicago & N. W. Ry. v. Mechanics' Institute, 239 Ill. 209; People v. Keechler, 194 Ill. 241.

Abutting; adjoining; attached; beside; bordering; close; contingent; neighboring; next; nigh. Dickey, J., dissenting opinion. Chicago & N. W. Ry. Co. v. Mechanics' Institute, 239 Ill. 225.

Lying near, close or contiguous, but not actually touching. Tudor v. Chicago, etc., R. Co., Ill., 27 N. E. 917.

Dramshop Act—Street Adjoining Brewery Included.

Section 2 of the Dramshop Act (J. & A. 4601), prohibiting those not having a license to keep a dramshop to sell liquor to be drunk upon the premises or in or upon an "adjacent" room, building, etc., is violated where beer is sold in a gallon measure with the knowledge that it was to be drunk on a public street or alley adjoining the brewery. Bandalow v. People, 90 Ill. 220.

ADJACENT CITIES.

Vaudeville Contract—Cities Three Hundred Miles Apart Excluded.

A contract to perform a comedy talking, singing and dancing act at certain named cities and providing for performances to be given at "adjacent cities" if required by contractee does not include, by the quoted expression, a place three hundred miles away from one of the places named. Gath v. Interstate, etc., Co., 170 Ill. App. 616.

ADJECTIVE LAW.

What Constitutes.

The adjective law is the law of pleading, practice, evidence, remedies and procedure, designed merely to secure and enforce in an orderly manner the substantive law. Highway Commissioners v. Bloomington, 253 Ill. 171. See also Substantive Law.

ADJOINING.

Touching or contiguous, as distinguished from lying near or adjacent. 52 N. Y. 395.

ADJOURN.

In strictness, to put off to a day specified. Also to suspend business for a time; to defer or delay. 14 How. Pr. (N. Y.) 54.

ADJOURNAL.

In Scotch practice. A term applied to the records of criminal courts. Books of Adjournal (old Scotch, "Bulks of Adiornale") were the original records of criminal trials, most of which are now lost. I Pitc. Crim. Tr. pt. 2, p. 225. An act of adjournal is an order of the court of justiciary, entered on its minutes. Shaw, Rep., Appendix.

ADJOURNED SUMMONS.

In English practice. A summons or citation issued in chambers, and adjourned into court for argument.

ADJOURNED TERM.

A continuation of a previous or regular term. 4 Ohio St. 473; 22 Ala. (N. S.) 27. Gen. St. Mass. c. 112, § 26, provides for holding an adjourned law term from time to time.

ADJUDICATAIRE.

In Canadian law. A purchaser at a sheriff's sale. See 1 Low (U. S.) 241; 10 Low. (U. S.) 325.

ADJUDICATION.

An application of the law to the facts and an authoritative declaration of result. Owners of Lands v. People, 113 Ill. 312.

In Scotch Law.

A process for transferring the estate of a debtor to his creditor. Ersk. Inst. lib. 2, tit. 12, §§ 39-55; Bell, Dict. (Shaw Ed.) 944.

It may be raised not only on a decree of court, but also where the debt is for a liquidated sum. The execution of a summons and notice to the opposite party prevents any transfer of the estate. Every creditor who obtains a decree within a year and a day is entitled to share with the first creditor, and, after ten years' possession under his adjudication, the title of the creditor is complete. Paterson, Comp. 1137, note. The matter is regulated by St. Feb. 26, 1684, p. 1672, c. 19. See Ersk. Inst. lib. 2, c. 12, §§ 15, 16.

ADJUNCTION.

(Lat. adjungere, to join to.) In civil law. The attachment or union permanently of a thing belonging to one person to that belonging to another. This union may be caused by inclusion, as if one man's diamond be set in another's ring; by soldering, as if one's guard be soldered on another's sword; by sewing, as by employing the silk of one to make the coat of another; by construction, as by building on another's land; by writing, as when one writes on another's parchment; or by painting, as when one paints a picture on another's canvas. Inst. 2. 1. 34; Dig. 41. 1. 9. 2. See 2 Bl. Comm. 404; 1 Bouv. Inst. note 499.

ADJUNCTS.

"Addition"-"Auxiliary" Synonymous.

The words "addition" and "auxiliary" are synonymous of "adjunct." Chicago v. Green, 238 Ill. 274.

ADJUNCTS AND ADDITIONS.

Drainage Act.

The expression "adjuncts and additions," used in section 7 of the act of 1889 (J. & A. 4290), known as the Sanitary District Act, means auxiliary channels to bring the sewage and drainage from the various sewers and systems of sewers of the municipalities in the limits of the sanitary district into the main channel of the sanitary district. Judge v. Bergman, 258 Ill. 254.

"Auxiliary Channels" Synonymous.

The expression "adjuncts and additions," used in section 2 of the act of 1903 (J. & A. 4317) enlarging the boundaries of the Sanitary District of Chicago, means the same as "auxiliary channels." Chicago v. Green, 238 Ill. 274.

ADJUSTMENT.

In insurance. The determining of the amount of a loss by fire or marine disaster. 2 Phil. Ins. §§ 1814, 1815.

ADMANUENSIS.

A person who swore by laying his hands on the book.

ADMEASUREMENT OF DOWER.

A remedy which lay for the heir, on reaching his majority, to rectify an assignment of dower may during his minority, by which the doweress had received more than she was legally entitled to. 2 Bl. Comm. 136; Gilb. Uses, 379.

The remedy is still subsisting, though of rare occurence. See 1 Washb. Real Prop. 225, 226; 1 Pick. (Mass.) 314; 2 Ind. 336.

In some of the states, the special pro-

able the widow to compel an assignment of dower is termed an "admeasurement of dower."

ADMINICLE.

In Scotch Law.

Any writing or deed introduced for the purpose of proof of the tenor of a lost deed to which it refers. Ersk. Inst. lib. 4, tit. 1, § 55; Stair, Inst. lib. 4, tit. 32, §§ 6, 7.

In English Law.

Aid; support. St. 1 Edw. IV. c. 1.

In Civil Law.

Imperfect proof. Merlin, Repert.

ADMINICULAR.

(From adminiculum, q. v.) Auxiliary "The murder would be adminicular to the robbery," i. e., committed to accomplish it. Story, J., 3 Mason (U. S.) 121.

ADMINICULAR EVIDENCE.

In ecclesiastical law. Evidence brought in to explain and complete other evidence. 2 Lee, Ecc. 595.

ADMINISTRATION.

(Lat. administrare, to assist in.) Management or control.

Of Government.

The management of the executive department of the government. charged with the management of the executive department of the government.

Of Estates.

The management of the estate of an intestate, or of a testator who has no executor. 2 Bl. Comm. 494. The term is applied broadly to denote the management of an estate by an executor, and also the management of estates of minors, lunatics, insolvents, etc., in those cases where trustees have been appointed ceeding which is given by statute to en- | by authority of law to take charge of such estate in place of the legal owners.

The species of administration are:

Ad Colligendum.

That which is granted for collecting and preserving goods about to perish (bona peritura). The only power over these goods is under the form prescribed by statute.

Ancillary.

That which is subordinate to the principal administration, for collecting the assets of foreigners. It is taken out in the country where the assets are locally situate. Kent, Comm. 43 et seq.; 1 Williams, Ex'rs, Am. Notes; 14 Ala. 829.

Cum Testamento Annexo.

That which is granted where no executor is named in the will, or where the one named dies, or is incompetent or unwilling to act. Such an administrator must follow the statute rules of distribution, except when otherwise directed by the will. Williams, Ex'rs; 2 Bradf. Sur. (N. Y.) 22. The residuary legatee is appointed such administrator, rather than the next of kin. 1 Vent. 217; 4 Leigh (Va.) 152; 2 Add. (Pa.) 352.

De Bonis non.

That which is granted when the first administrator dies before having fully administered. The person so appointed has in general the powers of a common administrator. Bac. Abr. "Executors" (B1); Rolle, Abr. 907; 22 Miss. 47; 27 Ala. 273; 9 Ind. 342; 4 Sneed (Tenn.) 411; 31 Miss. 519; 29 Vt. 170; 11 Md. 412.

De Bonis non cum Testamento Annexo.

That which is granted when an executor dies leaving a part of the estate unadministered. Comgn, Dig. "Administrators" (B1).

Durante Absentia.

That which subsists during the absence of the executor, and until he has proved the will. It is generally granted cillary.

when the next of kin is beyond sea, lest the goods perish, or the debts be lost. In England, it is not determined by the executor's dying abroad. 4 Hagg. Ecc. 360; 3 Bos. & P. 26.

Durante Minori Actate.

That which is granted when the executor is a minor. It continues until the minor attains his lawful age to act, which, at common law, is seventeen years. Godolph. Orph. Leg. 102; 5 Coke, 29.

Pendente Lite.

That which is granted pending the controversy respecting an alleged will or the the right of appointment. An officer of the court is appointed to take care of the estate only till the suit terminates. 2 P. Wms. 589; 2 Atk. 286; 2 Cas. temp. Lee, 258; 1 Hagg. Ecc. 313; 26 N. H. 533; 9 Tex. 13; 16 Ga. 13. He may maintain suits, but cannot distribute the assets. 1 Ves. Sr. 325; 2 Ves. & B. 97; 1 Bail & B. 192; 7 Md. 282.

Public.

That which the public administrator performs. This happens in many of the states by statute in those cases where persons die intestate, not leaving any who are entitled to apply for letters of administration. 3 Bradf. Sur. (N. Y.) 151; 4 Bradf. Sur. (N. Y.) 252.

Special.

That which is limited either in time or in power. Such administration does not come under the statutes of 31 Edw. III. c. 11, and 21 Hen. VIII, c. 5, on which the modern English and American laws are founded.

Domestic.

That had at the residence of the decedent.

Foreign.

An administration under the sanction and jurisdiction of a different state or nation. It may be domiciliary or ancillary.

ADMINISTRATOR.

A person authorized to manage and distribute the estate of an intestate, or of a testator who has no executor. See "Administration."

In English Law.

In English law, administrators are the officers of the ordinary appointed by him in pursuance of the statute, and their title and authority are derived exclusively from the ecclesiastical judge, by grants called "letters of administration." Williams, Ex'rs, 331. At first the ordinary was appointed administrator under the statute of Westminster II. Next, St. 31 Edw. III. c. 11, required the ordinary to appoint the next of kin and the relations by blood of the deceased. Next, under 21 Hen. VIII., he could appoint the widow, or next of kin, or both, at his discretion.

ADMIRALTY.

In England.

A court which has a very extensive jurisdiction of maritime causes, civil and criminal.

A court of admiralty exists in Ireland, but the Scotch court was abolished by 1 Wm. IV. c. 69. See "Vice Admiralty Courts."

In American Law.

A tribunal exercising jurisdiction over all maritime contracts, torts, injuries, or offenses. 2 Pars. Mar. Law, 508.

ADMITTANCE.

In English law. The act of giving possession of a copyhold estate. It is of three kinds, namely, upon a voluntary grant by the lord, upon a surrender by the former tenant, and upon descent.

ADMONISH.

To caution or advise. People v. Pennington, 267 Ill. 48.

ADMONITIO TRINA.

The third warning, giving to one standing mute, before the infliction of the peine forte et dure. 4 Bl. Comm. 325.

ADMONITION.

A reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that, should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, Repert. The admonition was authorized as a species of punishment for slight misdemeanors.

ADMORTIZATION.

The reduction of property of lands or tenements to mortmain, in the feudal customs.

ADOPTED CHILD.

Common Meaning.

The term "adopted child," in common parlance and as used by the masses, is very frequently applied to a child simply taken into a family and raised. Crumley v. Worden, 201 Ill. 116.

ADOPTION.

The act by which a person takes the child of another into his family, and treats him as his own.

A juridical act creating between two persons certain relations, purely civil, of paternity and filiation. 6 Demolombe Code Nap. § 1.

ADOPTION OF CHILDREN.

Unknown to Common Law.

The adoption of children was a thing unknown to the common law but was a familiar practice under the Roman law. Butterfield v. Sawyer, 187 Ill. 603.

Not Child in Fact.

An adopted child is not a child in fact, nor is an adopted child, having the



rights of a child, a child in fact. Keegan v. Geraghty, 101 Ill. 40.

Legal Meaning—Implies Legal Procedure.

The term "adopted child," as used in the law, has a strict significance and implies some form of legal procedure. Crumley v. Worden, 201 Ill. 116.

AD-PROMISSOR.

(Lat. promittere). One who binds himself for another; a surety; a peculiar species of fidejussor. Calv. Lex.

The term is used in the same sense in the Scotch law. The cautionary engagement was undertaken by a separate act; hence, one entering into it was called adpromissor (promissor in addition to). Ersk. Inst. 3. 3. 1.

ADROGATION.

In civil law. The adoption of one who was impubes,—that is, if a male, under tourteen years of age; if a female, under twelve. Dig. 1. 7. 17. 1.

ADULT.

In Civil Law.

A male infant who has attained the age of fourteen; a female infant who has attained the age of twelve. To be distinguished from full age in the civil law, which was twenty-five years. See Age. Domat, Civ. Law, tit. 2, § 2, note 8.

in Common Law.

One of the full age of twenty-one. Swanst. Ch. 553.

ADULTERATION.

The act of adulterating, or the state of being adulterated or debased by admixture with something else, generally of inferior quality; the use, in the production of any professedly genuine article, of ingredients which are cheaper and of inferior quality, or which are not considered so desirable by the consumer as other or genuine ingredients for which they are substituted. People v. Henning, 260 Ill. 564.

Criminal Code-Statutory Definition.

The addition of water or any foreign substance to milk or cream intended for sale or exchange is "adulteration," within the meaning of the Criminal Code. Act of 1879 6 (J. & A. 3486).

ADULTERINE GUILDS.

Companies of traders acting as corporations, without charters, and paying a fine annually for the privilege of exercising their usurped privileges. Smith, Wealth of Nations, bk. 1, c. 10; Wharton.

ADULTERIUM.

A fine imposed for the commission of adultery. Barr. Obs. St. 62, note.

ADULTERY.

In order to constitute the crime of adultery, the parties must dwell together openly and notoriously upon terms as if conjugal relations exist; they must co-habit together and there must be an habitual illicit intercourse between them. People v. Stern, 207 Ill. App. 154.

The voluntary sexual intercourse of a married person with a person other than the offender's husband or wife, whether the latter is married or single. Lyman v. People, 198 Ill. 546; Lyman v. People, 98 Ill. App. 387.

Criminal intercourse between a married person, and one of the opposite sex, whether married or single. Miner v. People. 58 Ill. 60.

Sexual intercourse of a married person with a person other than the offender's husband or wife. People v. Martin, 180 Ill. App. 580.

ADVANCE.

Something which precedes. Strauss v. Cohen, etc., Co., 169 Ill. App. 341.

To pay money before it is due, or to furnish money for a specified purpose, understood between the parties, the money or some equivalent to be returned; to supply beforehand; to loan before the work is done or the goods are made. Strauss v. Cohen, etc., 169 Ill. App. 341.

Payment of Money.

As applied to the payment of money, the word "advance" implies that the parties look forward to the time when the money will be due the recipient. Strauss v. Cohen, etc., Co., 169 Ill. App. 341.

Ordinary Meaning.

The ordinary use of the term "advance" indicates moneys paid before or in advance of the proper time of payment. Strauss v. Cohen, etc., Co., 169 Ill. App. 341.

ADVANCEMENT.

A gift by anticipation from a parent to a child of the whole or a part of what it is supposed such child would inherit on the death of the parent. 6 Watts (Pa.) 87; 4 Serg. & R. (Pa.) 333; 17 Mass. 358; 11 Johns. (N. Y.) 91; Wright (Ohio) 339.

An advancement can be made only by a parent to a child (5 Miss. 356; 2 Jones [N. C.] 137); or in some states, by statute, to a grandchild (4 Kent, Comm. 419; 4 Watts [Pa.] 82; 4 Ves. 437).

The intention of the parent is to decide whether a gift is intended as an advancement. 23 Pa. St. 85; 11 Johns. (N. Y.) 91; 2 McCord (S. C.) 103. See 26 Vt. 665.

That which is given by the father to his child or presumptive heir by anticipation of what he might inherit. Ducket v. Gerig. 223 Ill. 288.

The giving by a party to a child or heir by way of anticipation the whole or a part of what it is supposed the donee will be entitled to on the death of the party making it. Gray v. Newton, 201 Ill. 183; Wallace v. Reddick, 119 Ill. 156; Grattan v. Grattan, 18 Ill. 170; Strasburger v. Hoffman, 175 Ill. App. 123.

Purchase in Name of Wife or Child.

Whether a purchase in the name of a wife or child is an advancement is a question of pure intention, though presumed in the first instance to be a provision or settlement. Maxwell v. Maxwell, 109 Ill. 591. To a similar effect see Jones v. Dawson, 68 Ill. App. 72.

Non-Technical Meaning.

As used in other than legal papers, the word "advancement" frequently signifies merely the receipt of moneys in advance of the time of payment. Haberstich v. Elliott, 189 Ill. 77.

"Loan" Distinguished.

An advancement is not analogous to a loan, for a party making an advancement can never require the party to whom an advancement is made to pay him for the property advanced. Duckett v. Gerig, 223 Ill. 290.

"Gift" Distinguished.

An advancement differs from a gift inasmuch as it is charged against the child. Duckett v. Gerig, 223 Ill. 288.

Executed Gift Not Convertible Into Advancement.

An executed gift cannot be converted into an advancement without the consent of the donee, since the intention which fixes the character of the transaction as an advancement is the intention of the donor at the time of making the gift. Bolin v. Bolin, 245 III. 616.

Effect of Payment of Interest.

The fact that an agreement by which a father made an advancement to his sons required the payment of interest, and gave the sons the privilege of returning the amount advanced during the lifetime of the father does not deprive the transaction of its character of an advancement where the privilege of returning the amount rested wholly in the discretion of the sons, and could not be enforced by the father. Duckett v. Gerig, 223 Ill. 290.

"Debt" Distinguished.

An advancement differs from debt, in that there is not enforceable liability on the part of the child to repay during the lifetime of the donor or after his death, except in the way of suffering a deduction from his portion of the estate. Duckett v. Gerig, 223 Ill. 288.

Amounts Paid as Surety for Devises.

The amount for which the testator or his estate is liable as "bondsman" for a devisee, and which the will provides are to be deducted from the amount devised, is not an "advancement" in the technical sense of that word as used in the law. Haberstich v. Elliott, 189 Ill. 77.

"Ademption" Distinguished.

An advancement, unlike an ademption, has to do with intestate estates only. Duckett v. Gerig, 223 Ill. 288.

ADVANTAGEOUS.

Contract—Prevention of Further Loss Included.

A contract providing that a sale of real estate shall be made when "advantageous" does not necessarily mean that a sale should only be made when profitable, as a sale might be advantageous, when it will prevent the entailment of further losses to the party. Mariner v. Ingraham, 127 Ill. App. 547.

ADVANTAGIUM.

In old pleading. An advantage. Co. Entr. 484; Towns. Pl. 50.

ADVENT.

The period commencing on Sunday falling on St. Andrew's day (30th of November), or the first Sunday after, and continuing till Christmas.

It took its name from the fact that it immediately preceded the day set apart to commemorate the birth or coming (advent) of Christ. Cowell; Termes de la Ley.

Formerly, during this period, "all contentions at law were omitted." But, by statute 13 Edw. I. (Westminster II.) c. 48, certain actions were allowed.

ADVERSE.

Possession-Means Pedis Possessio.

To be adverse, a possession must be pedis possessio. Morrison v. Kelly, 22 Ill. 624. See also Pedis Possessio.

ADVERSE POSSESSION.

A possession inconsistent with the right of the true owner. Faloon v. Simshauser, 130 Ill. 655.

To constitute an adverse possession, it is not only necessary that there should be an actual, visible and exclusive possession, but that possession must be commenced and continued under a claim or right to hold the land against him who was seized, and an occupation with the intention of claiming the fee against the true owner, and also to exclude all other persons. Morse v. Seibold, 147 Ill. 323.

To constitute an adverse possession the possession must be hostile in its inception, and so continue without interruption for the period of twenty years; it must be an actual, visible and exclusive possession, acquired and retained under claim of title inconsistent with that of the true owner, but need not be under a rightful claim, or even under a muniment of title. Ill. Cent. R. Co. v. Houghton, 126 Ill. 240.

Elements.

Adverse possession must include these five elements: It must be (1) hostile or adverse; (2) actual; (3) visible, notorious and exclusive; (4) continuous; and (5) under a claim of title. Kirby v. Kirby, 236 Ill. 264; Page v. Bellamy, 222 Ill. 559; Roby v. Calumet, etc., Co., 211 Ill. 179; Illinois C. R. Co. v. Hatter, 207 Ill. 95; Zirngibl v. Calumet, etc., Co., 157 Ill. 447.

As Notice.

To constitute adverse possession, the possession must be with such circumstances as are capable in their nature of notifying to mankind that the possessor is on the land, claiming it as his own, in person or by tenant, and it must be visible, open and exclusive, hostile in its inception, and so continue, and be notorious and not secret. McClellan v. Kellogg, 17 Ill. 504. To the same effect see Alsup v. Stewart, 194 Ill. 597; Chicago & A. R. Co. v. Keegan, 185 Ill. 85; Ely v. Brown, 183 Ill. 595; Ambrose v. Raley, 58 Ill. 509.

Possession Under Agreement to Purchase.

When possession is taken under an agreement to purchase and the purchaser performs all his obligations, such possession becomes adverse. Richards v. Carter, 201 Ill. 168.

Occupancy of Part Under Claim to Whole.

If one makes the entry on land under a conveyance of several adjoining tracts, his actual occupancy of a part, with a claim of title to the whole, will enure as an adverse possession of the entire tract. Dills v. Hubbard, 21 III. 329.

Of Cotenant.

To constitute adverse possession as against a cotenant it is not sufficient that one tenant occupies the premises and appropriates rents and profits, makes repairs and improvements and pays taxes, but there must be outward acts of exclusive ownership, unequivocal, overt and notorious, of such a nature as by their own import to give notice to the cotenant that an adverse possession and an actual disseizin are intended to be asserted against him. Chicago P. & St. L. Ry. Co. v. Tice, 232 Ill. 237.

ADVERSE AND HOSTILE POSSESSION.

A possession inconsistent with the possession, or right of possession, by another, continued under a claim of right. Chicago & A. R. Co. v. Keegan, 185 Ill. \$5; Ely v. Brown, 183 Ill. 597.

ADVERSE USE.

Use under a claim of right known to the owner of the servient tenement; use such as the owner of an easement would make of it without permission asked or given; use under claim or right inconsistent with or contrary to the interest of the other party. Thorworth v. Scheets, 269 III. 582.

ADVERTISE.

To publish notice of, to publish a written or printed account of. Darst v. Doom, 38 Ill. App. 401.

Common Meaning.

The word "advertised," in common acceptation refers to notices printed or written or published in a newspaper. Lake E. & W. R. Co. v. People, 42 Ill. App. 389.

Railroads Act-And Warehouses.

A train is not "advertised" to stop at a station, within the meaning of section 25 of the act of 1874 (J. & A. 8837), relating to the fencing and operation of railroads, by the publication of a folder in which it is stated that a certain train will stop at such station or signal. Lake Erie & W. R. Co. v. People, 42 Ill. App. 389.

ADVERTISEMENT.

A notice published in hand bills or a newspaper. Darst v. Doom, 38 Ill. App. 401.

Information or knowledge communicated to individuals or the public in a manner designed to attract general attention.

A posting of notice on a signboard is an advertisement within a statute making the advertising of lottery tickets penal. 5 Pick. (Mass.) 42. And see 8 Watts & S. (Pa.) 373; 16 Pa. St. 68.

ADVERTISEMENTS OF QUEEN ELIZABETH.

Certain articles or ordinances drawn up by Archbishop Parker and some of the bishops in 1564, at the request of Queen Elizabeth, the object of which was to enforce decency and uniformity in the ritual of the church. The queen subsequently refused to give her official sanction to these advertisements, and left them to be enforced by the bishops under their general powers. Phil. Ecc. Law, 910; 2 Prob. Div. 276; 2 Prob. Div. 354.

ADVOCATE.

Derived from advocare, to summon to one's assistance. Advocatus originally signified an assistant or helper of any kind, even an accomplice in the commission of a crime. Cicero, pro Caecina, c. 8; Livy, lib. ii. 55; iii. 47; Tertullian de Idolatr. c. 23; Petron. Satyric, c. 25. Secondarily, it was applied to one called in to assist a party in the conduct of a suit. Inst. 1. 11; Dig. 50. 13. Hence, a pleader, which is its present signification.

In Civil and Ecclestiastical Law.

An officer of the court, learned in the law, who is engaged by a suitor to maintain or defend his cause. Advocates, like counselors, have the exclusive privilege of addressing the court either orally or in written pleadings; and, in general, in regard to duties, liabilities, and privileges, the same rules apply mutatis mutandis to advocates as to counsellors.

Lord advocate was an officer in Scotland appointed by the crown, during pleasure, to take care of the king's interest before the courts of session, judiciary, and exchequer. All actions that concern the king's interest, civil or criminal, must be carried on with concourse of the lord advocate. He also discharges the duties of public prosecutor, either in person or by one of his four deputies, who are called advocates depute. dictments for crimes must be in his name as accuser. He supervises the proceedings in important criminal cases, and has the right to appear in all such cases. He is, in fact, secretary of state for Scotland, and the principal duties are connected directly with the administration of the government.

Inferior courts have a procurator fiscal, who supplies before them the place of the lord advocate in criminal cases. See 2 Bankt. Inst. 492.

College or faculty of advocates was a corporate body in Scotland, consisting of the members of the bar in Edinburgh. A large portion of its members are not active practitioners, however. 2 Bankt. Inst. 486.

Church or ecclesiastical advocates were pleaders appointed by the church to maintain its rights.

In Ecclesiastical Law.

A patron of a living; one who has the advowson, advocatio. Tech. Dict.; Ayliffe,

Par. 53; Dane, Abr. c. 31, § 20; Ersk. Inst. 79. 9.

ADVOCATOR.

In Old Practice.

One who called on or vouched another to warrant a title; a voucher. Advocatus, the person called on, or vouched; a vouchee. Spelman; Towns. Pl. 45.

In Scotch Practice.

An appellant. 1 Brown, 67.

ADVOWTRY, OR ADVOUTRY.

In English law. The crime committed by a woman who, having committed adultery, continued to live with the adulterer. Cowell; Termes de la Ley.

AFFECT.

Chancery Act-Ordinary Signification.

The word "affect," used in section 3 of the Chancery Act (J. & A. 883), providing that suits which may "affect" real estate be brought in the county where the same or some part thereof is situated, means "to act upon," which is the ordinary signification of the word. Munger v. Crowe, 219 Ill. 15; Enos v. Hunter, 9 Ill. 217; Munger v. Crowe, 115 Ill. App. 192.

AFFECTED WITH A PUBLIC INTEREST.

Banking Business—Common Carrier— Innkeeper.

The business of banking, like that of an innkeeper or common carrier, is affected with a public interest. Meadowcroft v. People, 163 Ill. 64.

Business.

The cases where a business has been regarded as affected with a public interest are those where the person or corporation was acting under a franchise, or cases affecting trade or commerce, where there was a virtual monopoly of the means of transportation, or where from the nature of the regular course of

the business such person was necessarily entrusted with the property of customers, or where the business was conducted in such a manner that the public and all persons dealing in the products concerned have adopted their business to the methods used, so that such methods have become necessary to the safe and successful transaction of business. People v. Steele, 231 Ill. 347.

Theatre.

The business of operating a theatre is not affected with a public interest. People v. Steele, 231 Ill. 347.

AFFIDATUS.

One who is not a vassal, but who, for the sake of protection, has connected himself with one more powerful. Spelman; 2 Sharswood, Bl. Comm, 46.

AFFIDAVIT.

A declaration on oath, in writing, sworn to by a party before some person who has authority under the law to administer oaths. Figge v. Rowlen, 185 Ill. 238; Cox v. Stern, 170 Ill. 445; Hertig v. People, 159 Ill. 240; Hays v. Loomis, 84 Ill. 19; Harris v. Lester, 80 Ill. 311.

A statement or declaration reduced to writing and sworn to before some officer who has authority to administer an oath; a voluntary ex parte statement, formally reduced to writing, and sworn to or affirmed before some officer authorized by law to take it. Cox v. Stern, 170 Ill. 445.

Elements.

To constitute a formal affidavit, the deponent must sign the affidavit at the end, or his name must appear therein as the person who took the oath. Theobald v. Chicago, M. & St. P. Ry. Co., 75 Ill. App. 213.

Jurat.

The jurat is no part of an affidavit. Cox v. Stern, 170 Ill. 446; Theobald v. Chicago, M. & St. P. Ry. Co., 75 Ill. App. 213.

Want of Notarial Scal.

The fact that a notary public taking an affidavit does not attach his official seal to the jurat does not deprive the document of the character of an affidavit. Schaefer v. Kienzel, 123 Ill. 434; Rowley v. Berrian, 12 Ill. 201; Stout v. Slattery, 12 Ill. 163.

Mortgages Act-Affidavit Without Jurat.

Section 4 of the Mortgages Act (J. & A. 7579), providing that the lien of a chattel mortgage may be extended by filing an "affidavit" setting forth certain facts, is complied with by filing an affidavit containing no jurat, provided that it be proved aliunde that the facts contained in the affidavit were verified by oath duly administered by an officer duly authorized. Cox v. Stern, 170 Ill. 448.

Title or Caption Immaterial.

The quality of a paper as an affidavit does not depend on its being entitled in any cause or in any particular way, or on whether the paper has a caption. Hays v. Loomis, 84 Ill. 19; Harris v. Lester, 80 Ill. 311.

AFFILIATION.

The fixing upon one the paternity of a bastard.

In French Law.

A species of adoption which exists by custom in some parts of France.

The person affiliated succeeded equally with other heirs to the property acquired by the deceased to whom he had been affiliated, but not to that which he inherited.

In Ecclesiastical Law.

A condition which prevented the superior from removing the person affiliated to another convent. Guyot, Rep. Univ.

AFFINES.

(Lat. finis.) In civil law. Connections by marriage, whether of the persons or their relatives. Calv. Lex.

From this word we have affinity, denoting relationship by marriage. 1 Bl. Comm. 434.

The singular, affinis, is used in a variety of related significations,-a boundary (Du Cange); a partaker or sharer, affinis culpae (an aider or one who has knowledge of a crime) (Calv. Lex.).

AFFINITAS AFFINITATIS.

That connection between parties arising from marriage which is neither consanguinity nor affinity.

This term intends the connection between the kinsmen of the two persons married, as, for example, the husband's brother and the wife's sister. Ersk. Inst. 1. 6. 8.

AFFINITY.

The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other. The relation contracted on marriage between a husband and his wife's kindred, and between the wife and her husband's kindred, as distinguished from consanguinity or relationship by blood. 1 Denio (N. Y.) 25.

The relations of the wife, her brothers, her sisters, her uncles, are allied to the husband by affinity; and his brothers, sisters, etc., are allied in the same way to the wife. 1 Denio (N. Y.) 186. But the brother and the sister of the wife are not allied by the ties of affinity. 2 Barb. Ch. (N. Y.) 331.

AFFIRM.

To make firm: establish: confirm: or ratify; as, the Appellate Court affirmed the judgment. Best v. Klassen, 85 Ill. App. 468.

AFFIRMATION.

A solemn religious as-In practice. severation in the nature of an oath. Greenl. Ev. § 371.

AFFIRMATIVE PREGNANT.

In pleading. An affirmative allegation

adverse party. For example, if to an action of assumpsit, which is barred by the act of limitations in six years, the defendant pleads that he did not undertake, etc., within ten years, a replication that he did undertake, etc., within ten years would be an affirmative pregnant. since it would impliedly admit that the defendant had not promised within six years. Such a plea should be demurred to. Gould, Pl. c. 6, §§ 29, 37; Steph. Pl. 381; Lawes, Civ. Pl. 113; Bac. Abr. "Pleas" (note 6).

AFFIRMED TO.

Oaths and Affirmations Act.

A jurat to an affidavit in which a notary public certified that affiant "affirmed to" the affidavit before him implies that the notary administered the affirmation in the form prescribed by section 4 of the Oaths and Affirmations Act (J. & A. 7866). Colvin v. People. 166 Ill. 83.

AFFORCE THE ASSIZE.

To compel unanimity among the jurors who disagree.

It was done either by confining them without meat and drink, or, more anciently, by adding other jurors to the panel to a limited extent, securing the concurrence of twelve in a verdict. See Bracton, fols. 185b, 292a; Fleta, bk. 4, c. 9, § 2.

The practice is now discontinued.

AFFRAY.

The fighting of two or more persons in some public place to the terror of the people. Thomas v. Riley, 114 Ill. App. 522.

Distinguished from Riot.

It differs from a riot in not being premeditated; for if any persons meet together upon any lawful or innocent occasion, and happen on a sudden to engage in fighting, they are not guilty of a riot, but an affray only; and in that case none implying some negative in favor of the | are guilty except those actually engaged in it. Hawk. P. C. bk. 1, c. 65; § 3; 4 Bl. Comm. 146; 1 Russ. Crimes, 271.

Assault.

Fighting in a private place is only an assault. 1 Cromp., M. & R. 757; 1 Cox, C. C. 177; 22 Ala. 15; 29 Ind. 206.

AFFRI.

In old English law. Plow cattle, bullocks or plow horses. Affri, or afri carucae, beasts of the plow. Reg. Orig. 150a; St. Westminster II. c. 18; Spelman. Affri carectae, beasts of the cart. Fleta, lib. 2, c. 85.

AFORESAID.

Before mentioned; already spoken of or described. See 20 Mo. 411; 20 Ala. 35.

Indictment-Venus.

An allegation in the second count of an indictment that the grand jurors are sworn for "the county of ______, afore-said," refers with sufficient certainty by the term "aforesaid," to the county named in the first count. Noe v. People, 39 Ill. 97.

AFTER ----.

Promissory Note.

A promissory note payable thirty days after date, and "with interest after ——" is to be construed as meaning by the expression "after ——," that the note draws interest from and after thirty days from its date. Hesch v. Dennis, 194 Ill. App. 664.

AFTER AN INDEFINITE TIME.

Promissory Note.

A promissory note payable "after an indefinite time" is payable on demand. Knecht v. Boshold, 138 Ill. App. 431.

AFTER HEARING THE PROOF OFFERED.

Eminent Domain Act—Right to Open and

Section 9 of the Eminent Domain Act make the 6 (J. & A. 5259), providing that after a 11 III. 516.

view of the land taken and "after hearing the proof offered" the jury in a condemnation proceeding shall report, etc., implies, by the quoted expression, that the condemnee, as the one against whom the verdict will be rendered if there is no evidence, shall have the right to open and close. McReynolds v. Burlington & O. Ry. Co., 106 Ill. 157.

AFTER MY DEATH.

Promissory Note—Certainty of Time of Payment.

A promissory note payable "after my death" is due at once on the death of the maker, and not at some time after such death. Shaw v. Camp, 160 Ill. 428.

AFTER THE DEATH.

Deed-Present Grant of Future Estate.

A deed quit-claiming land to the grantee "after the death" of the grantor is a present grant of a future estate, the quoted expression limiting the grant to the remainder after the grantor's death. Bowler v. Bowler, 176 Ill. 543.

AFTER THE DUE PUBLICATION OF THE ORDINANCE.

Admission.

In a prosecution for violation of a city ordinance an admission of record that defendant did the acts claimed to be a violation of the ordinance "after the due publication of the ordinance" is to be interpreted as meaning after the expiration of the time requisite to make the publication of the ordinance effective. Laugel v. Bushnell, 197 Ill. 29.

AFTER THE SALE.

Attachment Act of 1845.

Section 26 of the Attachment Act of 1845, providing that the clerk shall make certain estimates "after the sale" and receipt of the proceeds by the sheriff, uses the quoted expression with reference to the time when the clerk is to make the estimate. Stahl v. Webster, 11 Ill. 516.

AFTERMATH.

The second crop of grass.

A right to have the last crop of grass or pasturage. 1 Chit. Prac. 181.

AGAINST THE WILL.

Technical words which must be used in framing an indictment for robbery from the person. 1 Chit. Cr. Law, 244.

In the statute of 13 Edw. I. (Westminster II.) c. 34, the offense of rape is described to be ravishing a woman "where she did not consent," and not ravishing against her will. Per Tindal, C. J., and Parke, B., in the addenda to 1 Den. C. C. 1. And in a very recent case this statute definition was adopted by all the judges. Bell, C. C. 63, 71.

AGE.

Years of life; that period of life at which the law allows persons to do acts or discharge functions which, for want of years, they were prohibited from doing or undertaking before.

At Common Law.

Males, before fourteen, are said not to be of discretion; at that age they may consent to marriage, and choose a guardian. Twenty-one years is full age for all private purposes, and they may then exercise their rights as citizens by voting for public officers, and are eligible to all offices, unless otherwise provided for in the constitution.

Females, at twelve, arrive at years of discretion, and may consent to marriage; at fourteen, they may choose a guardian; and twenty-one, as in males, is full age, when they may exercise all the rights which belong to their sex. The age of puberty for both sexes is fourteen.

In French Law.

A person must have attained the age of forty to be a member of the legislative body; twenty-five, to be a judge of a tribunal de premiere instance; twenty-seven to be its president, or to be judge or clerk of a cour royale; thirty, to be its infancy, and a infancy, and a ings may be structured in the age.

It is now about 1 Wm. IV. c. 37, Bl. Comm. 300.

president or procureur-general; twenty-five, to be a justice of the peace; thirty, to be judge of a tribunal of commerce, and thirty-five to be its president; twenty-five, to be a notary public; twenty-one, to be a testamentary witness; thirty, to be a juror. At sixteen, a minor may devise one-half of his property as if he were a major. A male cannot contract marriage till after the eighteenth year, nor a female before full fifteen years. At twenty-one both males and females are capable to perform all the acts of civil life. Toullier, Dr. Civ. liv. 1, Introd. note 188.

In Roman Law.

Infancy (infantia) extended to the age of seven; the period of childhood (pueritia), which extended from seven to fourteen, was divided into two periods,-the first, extending from seven to ten and a half, was called the period nearest childhood (aetas infantiae proxima); the other from ten and a half to fourteen, the period nearest puberty (aetas pubertati proxima); puberty (pubertas) extended from fourteen to eighteen; full puberty extended from eighteen to twenty-five; at twenty-five, the person was of legal age (aetas legitima), sometimes expressed as full age (aetas perfecta). See Tayl. Civ. Law, 254; Lec. Elem. Civ. 22.

AGE, 62 YEARS.

Application for Insurance.

The expression "age, 62 years" in an application for life insurance, has a well recognized meaning, which is that the applicant is living between the sixty-second and sixty-third anniversary of his birth. Central, etc., Co. v. Spence, 126 Ill. App. 44.

AGE PRAYER.

A statement made in a real action, to which an infant is a party, of the fact of infancy, and a request that the proceedings may be stayed until the infant becomes of age.

It is now abolished. St. 11 Geo. IV.; 1 Wm. IV. c. 37, § 10; 1 Lilly, Reg. 54; 3 Bl. Comm. 300.

AGENCIES OF GOVERNMENT.

Classification.

There is no division of the agencies of government into those which are political and those which are philanthropic. Scown v. Czarnecki, 264 Ill. 313.

AGENCY.

Includes Usual Modes and Means.

An agency, whether general or special, includes all the usual modes and means of accomplishing the agency, unless the inference is expressly excluded by other circumstances. Michigan S. & N. I. R. Co. v. Day, 20 Ill. 378.

AGENT.

A person employed by another to act for him. Chicago, B. & Q. R. Co. v. Suta, 123 Ill. App. 132; Crowley v. Summer, 97 Ill. App. 304.

One who undertakes to manage some affair to be transacted for another by his authority on account of the latter who is called the principal, and to render an account of it. Equitable, etc., Exchange v. Keyes, 67 Ill. App. 462.

In International Law.

The agents of a state in international affairs are (a) the persons to whom are delegated the management of the foreign affairs of the state by the constitution, and (b) all persons directly subordinate to them, the latter being generally designated as "diplomatic agents." Glenn, Int. Law, 105.

In English Parliamentary Practice.

Persons acting as solicitors in appealed cases in the privy council and house of lords are known as "agents," or "law agents." Macph. Privy Council, 65.

As Cause.

An active power or cause; that which has the power to produce an effect; as a physical, chemical or medicinal agent; as heat is a powerful agent. Butler, v. Aurora, E. & C. R. Co., 158 Ill. App. 387.

Insurance Act—Statutory Definition.

The term "agent," or "agents," as used in the Insurance Act, includes an ac-

knowledged agent, surveyor, broker, or any other person or persons who shall in any manner aid in the transaction of the insurance business of any insurance company not incorporated by the laws of this state. Insurance Act, 22 (J. & A. 6284); Continental, etc., Co. v. Ruckman, 127 Ill. 376.

Railroads and Warehouses Act—Electric Current in Third Rail.

The electric current conveyed by the third rail of a street railway company is an "agent" within the meaning of section 1 of the act of 1874 (J. & A. 8811), relating to damage to stock. Butler v. Aurora, E. & C. R. Co., 158 Ill. App. 387.

AGGRAVATION.

(Lat. ad, to, and gravis, heavy; aggravare, to make heavy), that which increases the enormity of a crime or the injury of a wrong.

In Criminal Law.

One of the rules respecting variances is that cumulative allegations, or such as merely operate in aggravation, are immaterial, provided that sufficient is proved to establish some right, offense, or justification included in the claim, charge or defense specified on the record. This rule runs through the whole criminal law, that it is invariably enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified. Lord Ellenborough. 2 Campb. 583; 4 Barn. & C. 329; 21 Pick. (Mass.) 525; 4 Gray (Mass.) 18; 7 Gray (Mass.) 49, 331; 1 Tayl. Ev. § 215. Thus, on an indictment for murder, the prisoner may be convicted of manslaughter, for the averment of malice aforethought is merely matter of aggravation. Co. Litt. 282a.

In Pleading.

The introduction of matter into the declaration which tends to increase the amount of damages, but does not affect the right of action itself. Steph. Pl. 257; 12 Mod. 597. See 3 Am. Jur. 287-313.

An example of this is found in the case where a plaintiff declares in trespass for entering his house, and breaking his close, and tossing his goods about. The entry of the house is the principal ground and foundation of the action, and the rest is only stated by way of aggravation (3 Wils. 294), and this matter need not be proved by the plaintiff, or answered by the defendant.

AGGREGATE.

A collection of particular persons or items, formed into one body. See Corporation.

Constitution of 1870.

Section 8 of article 9 of the constitution of 1870, providing that "county authorities shall never assess taxes, the aggregate of which shall exceed seventyfive cents per \$100 valuation," does not, by the use of the word "aggregate," manifest an intent that the county board shall specify the particular purpose for which taxes are levied, the provision being intended merely as a limitation upon the power of county authorities to levy taxes. People v. Wisconsin C. R. Co., 219 Ill. 96.

AGGREGATE VALUE.

Act of 1859.

The expression "aggregate value," used in the act of 1859 with reference to the question to be determined on appeal to the Supreme Court from the assessment of the state tax provided in section 22 of the charter of the Illinois Central Railroad Company, means that the court shall find its total and aggregate value, and not the value of each separate item, the words not referring specifically to the finding of the equalized value or to the duty of the court to decide whether onethird of the full valuation should be the value upon which the assessment must be levied. People v. Illinois C. R. Co., 273 Ill. 245.

AGGRIEVED.

Having a substantial grievance; a denial of some personal property right. Glos v. People, 259 Ill. 340.

Legal Sense.

A person aggrieved, in the legal sense, when a legal right is invaded by the act complained of or his pecuniary interest is directly affected by the decree of judgment. Glos v. People, 259 Ill. 340.

Administration Act.

One may be "aggrieved," within the meaning of section 124 of the Administration Act (J. & A. 173), relating to appeals from judgments of the county court, although not a party or record to the litigation, as for example, the surety on the bond of a deceased guardian, against whose estate an order has been made. Weer v. Gand, 88 Ill. 492. To the same effect see Moulding v. Wilhartz, 169 Ill. 428 (as to a surety on the bond of the assignee of an insolvent).

AGILD.

In Saxon law. Free from penalty (sine mulcta vel compensatione), not subject to the payment of gild, or weregild; that is, the customary fine or pecuniary compensation for an offense. Spelman; Cowell.

AGIO.

A term used in commercial transactions to denote the difference of price between the value of bank notes or other nominal money and the coin of the country. 5 Mees. & W. 535.

AGISTER.

One who receives and pastures cattle for hire. Root v. Utter, 173 Ill. App. 477; W. H. Howard, etc., Co. v. National, etc., Bank, 93 Ill. App. 475.

AGISTMENT.

The taking of another person's cattle into one's own ground to be fed, for a consideration to be paid by the owner. The person so taking cattle to pasture is called an "agister." Schouler, Bailm. § 96; Story, Bailm. § 443; 68 Cal. 290.

In Old English Law.

The taking of the cattle of strangers to pasture on the king's land, and collecting fees therefor to the use of the king. Spelman.

AGNATES.

In Scotch law. Relations on the father's side.

AGNATI.

In civil law. The members of a Roman family who traced their origin and name to a common deceased ancestor through the male line, under whose paternal power they would be if he were living.

They were called adgnati,-adcnati, from the words ad eum nati. Ulpianus says: "Adgnati autem sunt cognati virilis sexus ab eodem orti: nam post suos et consanguineos statim mihi proximus est consanguinei mei filius, et ego ei; patris quoque frater qui patruus appellatur; deinceps ceteri, si qui sunt, hinc orti in infinitum." Dig. 38. 16; De Suis 2, § 1. Thus, although the grandfather and father be dead, the children become sui juris, and the males may become the founders of new families, still they all continue to be agnates; and the agnatio spreads and is perpetuated not only in the direct, but also in the collateral, line. Marriage, adoption, and adrogation also create the relationship of the agnatio. In the Sentences of Paulus, the order of inheritance is stated as follows: Intestatorum hereditas, lege Duodecim Tabularum primum suis heredibus, de inde adgnatis et aliquando quoque gentibus deferebatur.

They are distinguished from the cognati, those related through females.

AGONY.

Violent pain of body or mind. Chicago v. McLean, 133 Ill. 153.

AGRARIAN LAWS.

In Roman law. Those laws by which the commonwealth disposed of its public

land, or regulated the possession thereof by individuals, were termed "Agrarian Laws."

The greater part of the public lands acquired by conquest were laid open to the possession of any citizen, but the state reserved the title and the right to resume possession. The object of many of the agrarian laws was to limit the area of public land of which any one person might take possession. The law of Cassius, B. C. 486, is the most noted of these laws.

Until a comparatively recent period, it has been assumed that these laws were framed to reach private property, as well as to restrict possession of the public domain, and hence the term "agrarian" is, in legal and political literature, to a great degree fixed with the meaning of a confiscatory law, intended to reduce large estates, and increase the number of land-Harrington, in his "Oceana," holders. and the philosophers of the French Revolution, have advocated agrarian laws in this sense. The researches of Heyne (Op. 4. 351), Niehbuhr (Hist. vol. 2, trans.), and Savigny (Das Recht des Besitzes), have redeemed the Roman word from the burden of this meaning.

AGREE TO LET.

Lease—When Synonymous with "Let."

The words, "agree to let" mean exactly the same as the word "let" unless there is something in the instrument to show that a present demise could not have been in the contemplation of the parties. Seibert v. Grace, 138 Ill. App. 363.

AGREE TO SELL.

Contract—Relative Expression.

Although the expression "agree to sell," when used in a contract, taken in their ordinary acceptation, refer to the future, the question whether there was a present sale vesting title in the vendee is not to be determined from the language of the instrument, but from the intention of the parties and other circumstances. Windmuller v. Fleming, 129 Ill. App. 485.

AGREED.

Pleading.

In an action of assumpsit upon a contract, which is set out in hace verba in the declaration, the use of the word "agreed," in an averment as to an extention of the time of performance of the contract, does not make the count one in debt. North v. Kizer, 72 Ill. 175.

AGREEMENT.

(From Lat. aggretio mentium.) A coming together of parties in opinion or determination; the union of two or more minds in a thing done or to be done; a mutual assent to do a thing. Comyn, Dig. "Agreement" (A 1); Plowd. 5a, 6a.

The consent of two or more persons concurring, the one in parting with, the other in receiving, some property, right, or benefit. Bac. Abr.

A mutual contract in consideration between two or more parties. 5 East, 10; 4 Gill & J. (Md.) 1; 12 How. (U. S.) 126.

Agreement is seldom applied to specialties; contract is generally confined to simple contracts; and promise refers to the engagement of a party without reference to the reasons or considerations for it, or the duties of other parties. Paris. Cont.

An agreement ceases to be such by being put in writing under seal, but not when put in writing for a memorandum. Dane, Abr. c. 11.

A promise or undertaking. This is a loose and inaccurate use of the word. 3 Conn. 335.

The writing or instrument which is evidence of an agreement. This is a loose and evidently inaccurate use of the term. The agreement may be valid, and yet the written evidence thereof insufficient.

Agreements are:

- (1) Conditional, being those which are to have full effect only in case of the happening of certain events, or the existence of a given state of things.
- (2) Absolute, being dependent on no contingency.

They are also:

(3) Executed, being those where noth-

ing further remains to be done by the parties, or

(4) Executory, being such as rest on articles, memorandums, parol promises or undertakings, and the like, to be performed in the future, or which are entered into preparatory to more solemn and formal alienations of property. Powell, Cont. An executed agreement always conveys a chose in possession, while an executory one conveys a chose in action only.

They are also:

(5) Express, being those in which the terms are openly uttered and avowed by the parties at the time of making, or

(6) Implied, being those which the law supposes the parties to have made, although the terms were not openly expressed.

AGREEMENT FOR INSURANCE.

An agreement often made in short terms preliminary to the filling out and delivery of a policy with the specific stipulations.

Such an agreement, specifying the rate of premium, the subject and risk, and amount to be insured, in general terms, and being assented to by the parties, is binding. 1 Phil. Ins. c. 1, § 3; 2 Curt. C. C. (U. S.) 277; 19 N. Y. 305.

AGREES.

Contract-Legal Meaning.

The word "agrees," used in a contract, ex vi termini, means that it is the agreement of both parties, both concurring on the point, whether both sign or not. Schneider v. Turner, 27 Ill. App. 231.

AID.

To help; to support; to sustain; to succor or to relieve. Burke v. Snively, 208 Ill. 340.

Constitution of 1870.

Separate section 3 of the Constitution of 1870, providing that the General Assembly shall not loan the state credit or appropriate from the treasury in "aid"

of railroads and canals, by the word "aid," prohibits the use of the state or appropriations from the treasury in aid of the Illinois and Michigan Canal, owned by the state, but permits appropriation of the surplus earnings of the canal for the purpose of extending or enlarging it. Burke v. Snively, 208 Ill. 343.

No Technical Meaning.

The word "aid" has no meaning established by a statute or judicial construction, or any technical meaning different from that given it by the lexicographers as its meaning as commonly understood. Burke v. Snively, 208 Ill. 340.

AID AND COMFORT.

Help; support; assistance; counsel; encouragement.

The constitution of the United States (article 3, § 3) declares that adhering to the enemies of the United States, giving them aid and comfort, shall be treason. These words, as they are to be understood in the constitution, have not received a full judicial construction. They import, however, help, support, assistance, countenance, encouragement. The word "aid," which occurs in St. Westminster I. c. 14, is explained by Lord Coke (2 Inst. 182) as comprehending all persons counseling, abetting, plotting, assenting, consenting, and encouraging to do the act (and he adds, what is not applicable to the crime of treason), who are not present when the act is done. See, also, 1 Burn, Just. 5, 6; 4 Bl. Comm. 37, 38.

AID PRAYER.

In English law. A petition to the court calling in help from another person who has an interest in the matter in dispute. For example, a tenant for life, by the curtesy, or for years, being impleaded, may pray aid of him in reversion; that is, desire the court that he may be called by writ, to allege what he thinks proper for the maintenance of the right of the person calling him, and of his own. Fitzh. Nat. Brev. 50; Cowell.

AIDING AND ABETTING.

In criminal law. The offense committed by those persons who, although not the direct perpetrators of a crime, are yet present at its commission, doing some act to render aid to the actual perpetrator thereof. 4 Sharswood, Bl. Comm. 34; Russ. & R. 363, 421; 9 Ired. (N. C.) 440; 1 Woodb. & M. 221; 10 Pick. (Mass.) 477; 12 Whart. (Pa.) 460; 26 Miss. 299.

A principal in the second degree is he who is present aiding and abetting the fact to be done. 1 Hale, P. C. 615.

AIDING, ABETTING OR ASSISTING.

Criminal Code—Negative Acquiescence Not Included.

"Aiding, abetting, or assisting," within the meaning of section 2 of the division 2 of the Criminal Code (J. & A. 3967), are affirmative acts, and do not include a mere negative acquiescence, not in any way made known to the principal malefactor. White v. People, 139 Ill. 150; White v. People, 81 Ill. 337.

ALCALDE.

In Spanish law. A judicial officer in Spain, and in those countries which have received the body of their laws from those of Spain. His powers and duties are similar to those of a justice of the peace.

ALDERMAN.

(Equivalent to "senator" or "senior.")

In English Law.

An associate to the chief civil magistrate of a corporate town or city.

The word was formerly of very extended signification. Spelman enumerates eleven classes of aldermen. Their duties among the Saxons embraced both magisterial and executive power, but would seem to have been rather an appellation of honor, originally, than a distinguishing mark of office.

Aldermannus civitatis burgi seu cas-

tellae (alderman of a city, borough, or castle). 1 Sharswood, Bl. Comm. 475, note.

Aldermannus comitatus (alderman of the county), who is thought by Spelman to have held an intermediate place between an earl and sheriff; by others, held the same as the earl. 1 Sharswood, Bl. Comm. 116.

Aldermannus hundredi seu wapentachii (alderman of a hundred or wapentake). Spelman.

Aldermannus regis (alderman of the king), was so called, either because he was appointed by the king, or because he gave the judgment of the king in the premises allotted to him.

Aldermannus totius Angliae (alderman of all England). An officer of high rank, whose duties cannot be precisely determined. See Spelman.

The aldermen of the city of London were probably originally the chiefs of guilds. See 1 Spence, Eq. Jur. 54, 56.

In American Cities.

The aldermen are generally a legislative body, having limited judicial powers as a body, as in matters of internal police regulation, laying out and repairing streets, constructing sewers, and the like; though in many cities they hold separate courts, and have magisterial powers to a considerable extent. Consul Spelman; Cowell; 1 Sharswood, Bl. Comm. 116; Reeve, Hist. Eng. Law; Spence, Eq. Jur.

ALE CONNER.

(Also called "ale taster.") An officer appointed by the court leet, sworn to look to the assize and goodness of ale and beer within the precincts of the leet. Kitch. Cts. 46; Whishaw. An officer appointed in every court leet, and sworn to look to the assize of bread, ale or beer within the precincts of that lordship. Cowell. This officer is still continued in name, though the duties are changed or given up. 1 Crabb, Real Prop. 501.

ALEATORY CONTRACT.

In civil law. A mutual agreement, of which the effects, with respect both to

the advantages and losses, whether to all the parties or to some of them, depend on an uncertain event. Civ. Code La. art. 2951.

The term includes contracts, such as insurance, annuities, and the like.

ALFET.

The vessel in which hot water was put, for the purpose of dipping a criminal's arm in it up to the elbow in the ordeal by water. Cowell.

ALIA ENORMIA.

(Lat. other wrongs). In pleading. A general allegation, at the end of a declaration, of wrongful acts committed by the defendant to the damage of the In form it is, "and other plaintiff. wrongs then and there did against the peace," etc. Under this allegation, damages and matters which naturally arise from the act complained of may be given in evidence (2 Greenl. Ev. § 678), including battery of servants, etc., in a declaration for breaking into and entering a house (6 Mod. 127; 2 Term R. 166; 7 Har. & J. [Md.] 68), and all matters in general which go in aggravation of damages merely, but would not of themselves be ground for an action (Buller, N. P. 89; 3 Mass. 222; 6 Munf. [Va.] 308). But matters in aggravation may be stated specially (15 Mass. 194; Gilm. [Va.] 227), and Matters which of themselves would constitute a ground of action must be so stated (1 Chit. Pl. 348; 17 Pick. [Mass.] 284). See, generally, 1 Chit. Pl. 648; Buller, N. P. 89; 2 Greenl. Ev. §§ 268, 273, 278; 2 Salk. 643; Peake, Ev. 505.

ALIAS.

(Lat. alius, another). In practice. Before; at another time.

ALIAS WRIT.

An alias writ is a writ issued where one of the same kind has been issued before in the same cause. The second writ runs, in such case, "We command you, as we have before commanded you" (sicut alias), and the Latin word alias is used to denote both the writ and the clause in which it or its corresponding English word is found. It is used of all species of writs.

A second writ issued where one of the same kind has been issued before in the same cause, when the former writ has not produced its effect. Pack v. American, etc., Bank, 172 Ill. 196.

A writ issued where one of the same kind has been issued before in the same cause, the second writ running, "we command you as we have before commanded you" (sicut alias), the Latin word "alias" being used to denote both the writ and the cause in which it or its corresponding English word is found. American, etc., Bank v. Pack, 70 Ill. App. 179.

Blackstone's Definition.

One which is issued when a former writ has not procured its effect, so called from the words "as we have formerly commanded you" (sicut alias praecipimus), being inserted after the usual commencement, "We command you." American, etc., Bank v. Pack, 70 Ill. App. 179.

ALIAS DICTUS.

(Lat. otherwise called). A description of the defendant by adding to his real name that by which he is known in some writing on which he is, to be charged, or by which he is known. 4 Johns. (N. Y.) 118; 2 Caines (N. Y.) 362; 3 Caines (N. Y.) 219.

ALIBI.

(Lat. elsewhere). Presence in another place than that described.

Criminal Law.

When a person, charged with a crime, proves (se eadem die fuisse alibi) that he was, at the time alleged, in a different place from that in which it was committed, he is said to prove an alibi, the effect of which is to lay a foundation for

the necessary inference that he could not have committed it. See Bracton, 140.

A defense to a criminal charge, the theory of which is that the prisoner was so far removed from the scene of the crime, at the time of its commission, to make it impossible that he could have committed it. Miller v. People, 39 Ill. 465. To the same effect see People v. Lukoszus, 242 Ill. 108.

ALIEN.

(Lat. alienus, belonging to another; foreign). A foreigner; one of foreign birth.

In England.

One born out of the allegiance of the king.

In the United States.

One born out of the jurisdiction of the United States, and who has not been naturalized under their constitution and laws. 2 Kent, Comm. 50. The children of ambassadors and ministers at foreign courts, however, are not aliens. And see 10 U. S. St. at Large, 604.

ALIEN AMY.

An alien friend; i. e., a subject of a friendly nation.

ALIEN ENEMY.

One who owes allegiance to an adverse belligerent nation. Dorsey v. Brigham, 177 Ill. 256.

One who owes allegiance to the adverse belligerent. 1 Kent, Comm. 73.

He who owes a temporary, but not a permanent, allegiance, is an alien enemy in respect to acts done during such temporary allegiance only, and when his allegiance terminates, his hostile character terminates also. 1 Bos. & P. 163.

ALIENAGE.

The condition or state of an alien.

ALIENATE.

To convey; to transfer. Co. Litt. 118b. "Alien" is very commonly used in the same sense, 1 Washb. Real Prop. 53. See "Alienation."

To voluntarily part with the ownership by bargain and sale, or by gift or will. Miller v. German, etc., Co., 54 Ill. App. 56.

ALIENATED.

At Common Law.

Property not transferred or devised is not "alienated," according to the principle of the common law. Miller v. German, etc., Co., 54 Ill. App. 56.

ALIENATION.

Of Property.

The transfer of property and possession of lands, tenements, or other things from one person to another. Termes de la Ley. It is particularly applied to absolute conveyances of real property. A transfer of less than the whole title is not, in the United States, an alienation. 11 Barb. (N. Y.) 624.

Alienation is either by deed, or by matter of record.

- (1) Alienations by deed are:
- (a) Original or primary alienations are those by which a benefit or estate is created or first arises. They are feoffment, gift, grant, lease, exchange, and partition.
- (b) Derivative or secondary alienations are those by which the benefit or estate originally created is enlarged, restrained, transferred or extinguished: or they may be made by conveyances under the statute of uses. They are release, confirmation, surrender, assignment, and defeasance. Those deriving their force from the statute of uses are covenant to stand seized, bargain and sale, lease and release, deeds to declare the uses of other more direct conveyances, and deeds of revocation of uses.
- (2) Alienation by matter of record may be by private act of the legislature, by patents and other public grants, by fine, by common recovery.

The transfer of the property and possession of land, tenements, or other things from one person to another. Dickson v. New York, etc., Co., 211 Ill. 480.

An act whereby one man transfers the property and possession of land tenants or other things to another. Boyd v. Cudderback, 31 Ill. 119; Miller v. German, etc., Co., 54 Ill. App. 56.

In Medical Jurisprudence.

A generic term, denoting the different kinds of aberration of the human understanding. 1 Beck, Med. Jur. 535.

Applied to Absolute Conveyance of Real Estate.

The term "alienation" is particularly applied to absolute conveyances of real estate. Dickson v. New York, etc., Co., 211 Ill. 480.

Applies to Land.

Usually the term "alienation" applies to land or some interest therein. Miller v. German, etc., Co., 54 Ill. App. 56.

ALIMENT.

In Scotch Law.

To support; to provide with necessaries. Paterson, Comp. §§ 845. 850.

Maintenance; support; an allowance from the husband's estate for the support of the wife. Paterson, Comp. § 893.

In Civil Law.

Food and other things necessary to the support of life; money allowed for the purpose of procuring these. Dig. 50, 16. 43.

In Common Law.

To supply with necessaries. 3 Edw. Ch. (N. Y.) 194.

ALIMONY.

In General.

Money paid for aliment or support.

The allowance which a husband, by order of court, pays to his wife, living separate from him, for her maintenance. Bish. Mar. & Div. § 549.

The term is sometimes restricted to an allowance for a wife's support, made either pending an action for divorce, or after a decree of divorce.

That allowance which is made to a woman, on a decree of divorce, for her support out of the estate of her husband, being the equivalent of the obligation implied in every marriage contract—that the husband shall furnish his wife a suitable support and maintenance. Adams v. Storey, 135 Ill. 455; Stillman v. Stillman, 99 Ill. 201.

An allowance to a wife by order of court on account of her, without her fault, living separate and apart from him. Rush v. Flood, 105 Ill. App. 185. To a similar effect see Storey v. Storey, 23 Ill. App. 565.

That maintenance or support which the husband, on separation, is bound to provide for the wife. Cole v. Cole. 35 Ill. App. 545; Newman v. Newman, 69 Ill. 168; Wheeler v. Wheeler, 18 Ill. 40; Stillman v. Stillman, 7 Ill. App. 529.

A share for the time being of the income, or the payment of an annuity in installments, for the support of the wife. Wilson v. Wilson, 102 Ill. 300.

Pendente Lite.

Alimony pendente lite is that ordered during the pendency of a suit.

Permanent.

Permanent alimony is that ordered for the use of the wife after the termination of the suit, during their joint lives, or until the further order of the court.

Payment for Support of Children.

An order to pay for the support of children is not an award of alimony. Foote v. Foote, 22 Ill. 428; Bergen v. Bergen, 22 Ill. 189; Rush v. Flood, 105 Ill. App. 185; Stillman v. Stillman, 7 Ill. App. 529.

As Penalty for Breach of Duty.

Alimony is a penalty for failure to perform a duty, and is not founded on contract. Barclay v. Barclay, 184 Ill. 376.

As Allowance for Joint Lives.

Alimony, if payable in installments, is, unless otherwise specially provided, an allowance for the support of the beneficiary during the joint lives of herself and her divorced husband. Lennahan v. O'Keefe, 107 Ill. 623.

ALL ACTIONS.

Limitations Act—Scire Facias Included.
The expression "all actions," used in section 16 of the Limitations Act (J. & A. 7211), includes scire facias. Gibbons v. Goodrich, 3 Ill. App. 595.

ALL APPLICANTS FOR OFFICES.

Civil Service Act—Policeman Submitting to Examinations.

The expression "all applicants for offices," used in section 6 of the act of 1895 (J. & A. 1804), known as the Civil Service Act, includes a police patrolman who submits himself to examination under the act. Kenneally v. Chicago, 220 Ill. 500.

ALL ASSESSMENTS WHATSO-EVER.

Lease — Covenant — Does Not Include Taxes.

A covenant in a lease to pay "all assessments whatsoever" on the demised premises does not include, by the quoted phrase, state, county and city taxes on such premises, such taxes being not included under the word "assessments," and the word "whatsoever" not operating to extend the meaning of the covenant to anything not so included. Stephani v. Catholic Bishop, 2 Ill. App. 254.

ALL BRIDGE STRUCTURES.

Revenue Act—Railroad Bridge Not Included.

Section 1 of the act of 1873 (J. & A. 9584), providing for the taxation of all "bridge structures" across any navigable stream forming the boundary line between Illinois and other states does not include railroad bridges across the Mis-

sissippi River built and exclusively used by a railroad as part of its continuous line of railroads. Anderson v. Chicago, B. & Q. R. Co., 117 Ill. 30.

ALL CASES RELATING TO REVENUE

Practice Act—Means Cases for Collecting Taxes.

The expression "all cases relating to revenue," used in section 118 of the Practice Act (J. & A. 8655), relating to the appellate jurisdiction of the supreme court, refers to cases for the collection of revenue, such as suits for taxes, and not every case which may remotely affect the revenue. Hodge v. People, 96 Ill. 424.

ALL CASES SOUNDING IN DAMAGES.

Appellate Court Act.

The expression "all cases sounding in damages," used in section 8 of the Appellate Court Act (J. & A. 2968), is intended to include all cases, whether excontractu or ex delicto, where the damages are not susceptible of direct proof. Bradshaw v. Standard, etc., Co., 114 Ill. 174.

Contempt Proceeding Not Included.

The expression "all cases sounding in damages," used in section 8 of the Appellate Court Act (J. & A. 2968), relating to appeals and writs of error from judgments of the appellate court, does not include a proceeding to punish for contempt. Leopold v. People, 140 Ill. 557.

ALL CAUSES IN LAW AND IN EQUITY.

Constitution of 1870.

The expression "all causes in law and in equity," used in section 12 of article 6 of the Constitution of 1870, relating to the jurisdiction of circuit courts, includes every claim or demand in a court of justice which was known at the adoption of the constitution as an action at law or a suit in chancery and all actions since provided for in which personal or

property rights are involved of the same nature as previously existing actions at law or in equity, but does not apply to special statutory proceedings involving rights and providing remedies which are not of a kind previously existing either at law or in equity. Christensen v. R. W. Bartelmann Co., 273 Ill. 348; Brueggemann v. Young, 208 Ill. 185; Lavin v. Wells, etc., Co., 195 Ill. App. 115; Douglas v. Hutchinson, 183 Ill. 328.

Election — Commissioners' Application Included.

The expression "all causes in law and in equity," used in section 12 of article 6 of the Constitution of 1870, relating to the jurisdiction of circuit courts, includes an application to the circuit court by the civil service commission for an order requiring persons to appear before it and give evidence and produce books and papers under section 14 of the Act of 1895 (J. & A. 1813), known as the Civil Service Act. People v. Kipley, 171 III. 68.

Election Contest Not Included.

The expression "all cases in law or in equity," used in section 12 of article 6 of the Constitution of 1870, relating to the jurisdiction of circuit courts, does not include a proceeding to contest an election. Brueggemann v. Young, 208 Ill. 183; Douglas v. Hutchinson, 183 Ill. 328; Allerton v. Hopkins, 160 Ill. 452.

ALL CIVIL CASES.

City Court Act.

The expression "all civil cases," used in section 1 of the act of 1901 (J. & A. 3289), known as the City Court Act, includes only law and equity cases as the same were known to the common law, and such other actions since provided for by statute, as belong to the same class or are of the same nature as previously existing actions at law or in equity in which personal rights are involved, and where a remedy for the recovery of property or for damages for the infringement of a right is given. Brueggemann v. Young, 208 Ill. 183.

Election Contest—Not Included.

The expression "all civil cases," used in section 1 of the act of 1901 (J. & A. 3289), known as the City Court Act, does not include a proceeding to contest an election. Brueggemann v. Young, 208 Ill. 183.

ALL CONVEYANCES.

Schools Act—Part Payment Mortgage Included.

The expression "all conveyances," used in section 80 of the Schools Act of 1872, now section 136 of the Schools Act (J. & A. 10171), relating to conveyances of real estate cities for the use of schools, includes a mortgage taken to secure the payment of the purchase price for real estate used for school purposes. People v. Roche, 124 Ill. 15.

ALL FEES, PERQUISITES AND EMOLUMENTS.

Fees and Salaries Act—Interest on Public Funds Included.

The expression "all fees, salaries and perquisites," used in section 52 of the Fees and Salaries Act (J. & A. 5654), includes interest received on public funds. Lake County v. Westerfield, 278 Ill. 129.

Naturalization Fees Included.

The expression "all fees, perquisites and emoluments," used in section 52 of the Fees and Salaries Act (J. & A. 5654), includes the portion of fees retained by clerks of circuit courts under the Act of Congress of 1906, relating to naturalization. People v. Witzman, 268 Ill. 514.

Payments to Officer in Official Capacity. The words "fees, perquisites and emoluments," used in section 52 of the Fees and Salaries Act (J. & A. 5654), are sufficiently comprehensive to include every payment to a public officer in his official capacity. County v. Westerfield, 196 Ill. App. 439.

ALL INTERESTS.

Deed of Trust—"All Right, Title or Interest" Compared.

The expression "all interest," used in the granting clause of a deed of trust purporting to convey a tract of land, is of broader signification than "right, title or interest," or "all our right, title or interest," and is broad enough to convey the premises described in the deed. Glos v. Furman, 164 Ill. 590.

ALL JUDICIAL OFFICERS.

Constitution of 1870—Justice of Peace Included.

The expression "judicial officers," used in section 29 of article 6 of the Constitution of 1870, includes justices of the peace. Tissier v. Rhein, 130 Ill. 114.

ALL LAWS RELATING TO COURTS.

Constitution of 1870—Laws Relating to Justices of Peace.

Laws fixing the number of justices of the peace to be elected within a specified territory are within the meaning of section 29 of article 6 of the Constitution of 1870, requiring that "all laws relating to courts" shall be general and of uniform operation. Tissier v. Rhein, 130 Ill. 114.

ALL MUNICIPAL CORPORATIONS.

Constitution of 1870—Enlarged Sense.

The expression "all municipal corporations," used in section 9 of article 9 of the Constitution of 1870, is not used in its primary sense of cities, towns and villages, but in their ordinarily accepted and more enlarged sense of public local corporations exercising some governmental function. Wilson v. Board of Trustees, 133 Ill. 464.

ALL NECESSARY POLICE ORDINANCES.

Cities and Villages Act—"Indispensable" Distinguished.

Clause 66 of section 1 of article T of the Cities and Villages Act (J. & A. 1334), empowering cities and villages to enforce "all necessary police ordinances," does not use the word "necessary" in the sense of "indispensable," but was intended to empower cities and villages to pass all ordinances conducive to the promotion of the health, safety and welfare of its inhabitants. Spiegler v. Chicago, 216 Ill. 126; Wice v. Chicago & N. W. Ry. Co., 193 Ill. 353.

Ordinance Regulating Oil Traffic Included.

Clause 66 of section 1 of article 5 of the Cities and Villages Act (J. & A. 1334), empowering cities and villages to enforce "all necessary police ordinances" includes, by the quoted expression, power to pass an ordinance regulating in a reasonable manner the handling of oils in "tank-wagons or other wagons or vehicles" upon the streets of a city. Spiegler v. Chicago, 216 Ill. 126.

ALL OF MY ESTATE.

Will—When Meaning Whole Estate.

The expression "all of my estate," used in a will, means primarily all of the estate of the testator wherever situated, and is to be so construed unless the context shows that a more restricted construction will better comport with the clear intention of the testator. Hale v. Hale, 125 Ill. 407.

ALL OF THE SURFACE OF SAID FENCES.

Billboard Contract—Includes Inside of

A contract whereby an advertising concern secured the right to use "all of the surface of said fences" and buildings to be erected on certain land includes the surface of the inside as well as the outside of the fences, and confers the right to enter on the premises enclosed by the fences in order to reach the inside of such fence and the surface of the buildings. Willoughby v. Lawrence, 116 Ill. 19.

ALL OF THESE ELEMENTS MUST CONCUR.

Contest of Will-Instruction.

In a proceeding to contest a will, where instructions lay down the elements of a valid execution of a will, and instruction

that "all of these elements must concur" does not mean that the testator must be able to hold all these things in mind at the time of making the will, but that the testator possessed the mental power to understand such things at that time. Dowle v. Sutton, 227 Ill. 196.

ALL OTHER CASES.

Constitution of 1848—Election Contest Not Included.

The expression "all other cases," used in section 5 of article 5 of the Constitution of 1848, relating to the appellate jurisdiction of the supreme court, does not include a proceeding to contest an election. Moore v. Mayfield, 47 Ill. 169.

ALL OTHER EXHIBITIONS, PERFORMANCES AND ENTERTAINMENTS.

Ordinance-Horse Races Included.

An ordinance classifying public entertainment for the purpose of taxing them, and including in a certain class "circuses, menageries, caravans, side-shows, minstrel or musical entertainments," etc., and "all other exhibitions, performances and entertainments," includes by the quoted expression, horse races taking place in enclosed grounds, to which large numbers of people pay for admission. Webber v. Chicago, 148 Ill. 318.

ALL OTHER EXPENSES.

Trust Deed—Abstract Used in Foreclosure Not Included.

A trust deed authorizing the trustees, in distributing the proceeds on sale under the deed, to pay "all other expenses" of the trust does not include the expense of procuring an abstract of title for the use of attorneys in foreclosing the deed. Cheltenham, etc., v. Whitehead, 128 Ill. 285.

ALL OTHER OFFICERS.

Elections Act—Means "All Other Like Officers."

The expression "all other officers," used in section 98 of the Elections Act

(J. & A. 4825), relating to the jurisdiction of the county court over election contests, means all other like officers, or of the same class or grade as those enumerated. Baker v. Shinkle, 249 Ill. 159; Misch v. Russell, 136 Ill. 28; Brush v. Lemma, 77 Ill. 498.

Mayor Not Included.

The expression "all other officers," used in section 98 of the Elections Act (J. & A. 4825), relating to the jurisdiction of the county court over election contests, does not include the mayor of a city. Brush v. Lemma, 77 Ill. 498.

Officers of School District Included.

The expression "all other officers," used in section 98 of the Elections Act (J. & A. 4825), relating to the jurisdiction of the county court over elections, includes the officers of school districts. Misch v. Russell, 136 Ill. 28.

Trustees of Park District Included.

The expression "all other officers," used in section 98 of the Elections Act (J. & A. 4825), relating to the jurisdiction of the county court over election contests, includes the trustees of a pleasure driveway and park district. Baker v. Shinkle, 249 III. 159.

ALL OTHER PERSONAL PROPERTY.

Revenue Act.

An assessment of property placed by assessors under the heading, "all other personal property" required to be listed, being the thirty-sixth class mentioned in section 25 of the Revenue Act (J. & A. 9239), raises the presumption that the property assessed was not included in either of the thirty-five preceding classes. Holt v. Hendee, 248 Ill. 297.

ALL OTHER PERSONS.

Attachment Act—Common Carrier Not Included.

The expression "all other persons," used in section 21 of the Attachment Act (J. & A. 512), relating to the duty of

the sheriff to summon certain persons as garnishees in case he fails to find sufficient property to satisfy an attachment, does not include a common carrier. Michigan C. R. Co. v. Chicago & M. L. S. R. Co., 1 Ill. App. 407.

ALL OTHER PLACES OF PUBLIC ACCOMMODATION AND AMUSEMENT.

Criminal Code—Drug Store Not Included.

The expression "all other places of public accommodation and amusement," used in section 1 of the act of 1885 (J. & A. 3531), known as the Civil Rights Act, does not include a drug store. Cecil v. Green, 161 Ill. 269.

ALL OTHER PROVISIONS.

Cities and Villages Act—Tobacco Not Included.

The expression "all other provisions," used in paragraph 50 of section 1 of article 5 of the Cities and Villages Act (J. & A. 1334), relating to the powers of cities and villages, is restricted to articles of the same character as those specifically enumerated, and does not include tobacco. Gundling v. Chicago, 176 Ill. 346.

ALL OTHER TAXES.

Covenant—Special Assessment Not Included.

A covenant in a lease providing for the payment by the lessee of the water tax and one-half of "all other taxes" does not include special assessments. DeClerq v. Barber, etc., Co., 167 Ill. 218.

ALL OTHERS PURSUING LIKE OCCUPATIONS.

Cities and Villages Act—Governed by Rule of Generis.

The expression "all others pursuing like occupations," used in paragraph 42 of section 1 of article 5 of the Cities and Villages Act, relating to the power of cities and villages, is governed by the rule of ejusdem generis, and includes

only cases of the same general nature as those specifically enumerated. Union, etc., Co. v. Chicago, 199 Ill. 520.

Street Railroad Included.

Street railway companies are within the meaning of paragraph 42 of section 1 of article 5 of the Cities and Villages Act (J. & A. 1334) empowering cities and villages to license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen "and all others pursuing like occupations." Union, etc., Co. v. Chicago, 199 Ill. 519. To the same effect see Allerton v. Chicago, 6 Fed. 560 (an Illinois case brought in the District Court of the United States evidently by reason of diversity of citizenship).

ALL PARTIES.

Insolvent Act.

The expression "all parties," used in section 15 of the Voluntary Assignments Act (J. & A. 6248), relating to the discontinuance of proceedings under the assignment, means all parties having rights under the assignment. Howe v. Warren, 154 Ill. 247.

ALL PERSONAL ESTATE.

Ordinary Sense — Including Money Loaned.

The term "all personal estate" in its ordinary sense, is understood to include loaned money, as well as every other species of personal property. Jacksonville v. McConnel, 12 Ill. 140.

ALL PROPERTY.

Charter of Northwestern University.

The amendment of the charter of the Northwestern University, enacted in 1851, exempting from taxation "all property" of the university, includes, by the quoted expression, all property acquired both before and after the enactment of the amendment, regardless of changes in conditions as to real estate since such enactment, the purpose thereof being to exempt the university, and not the

property, from taxation. Northwestern University v. Hanberg, 237 Ill. 191.

ALL PROPERTY OF INSTITU-TIONS OF LEARNING.

Revenue Act—Means Property Owned by Institutions.

The expression "all property of institutions of learning," used in section 2 of the Revenue Act of 1872, now J. & A. 9215 (the act having been amended by the act of 1909 by substituting the word "schools" for the expression "institutions of learning"), means the property owned by such institutions, and does not include property of which the title is in an individual, although such property is exclusively used for the benefit of the institution. Montgomery v. Wyman, 130 Ill. 22.

ALL PROSECUTIONS.

Constitution of 1848—Quo Warranto Included.

The expression "all prosecutions," used in section 26 of article 5 of the Constitution of 1848, relating to process, includes an information in the nature of quo warranto. People v. Mississippi & A. R. Co., 13 Ill. 68; Donnelley v. People, 11 Ill. 553.

ALL PUBLIC SCHOOL HOUSES.

Revenue Act—Means Those Owned by State or School District.

Section 2 of the Revenue Act (J. & A. 9215), exempting from taxation, inter alia, "all public school houses," refers to the public school houses owned by the state, or the school district and boards of education organized under the school laws of the state passed under the constitution provision relating to a system of free schools. People v. Ryan, 138 Ill. 263.

ALL REGULAR PASSENGER TRAINS.

Statute.

enactment, the purpose thereof being to A train engaged in carrying passengers, exempt the university, and not the running regularly every day on an adver-

tised time card of the company, equipped as all other passenger trains are, is within the meaning of the act of 1879 requiring "all regular passenger trains" to stop at county seats for a certain length of time. Chicago & A. R. Co. v. People, 105 Ill. 659.

ALL RIGHT.

Contract.

A person who, when asked by another person not to sell goods to the wife of such other person on his credit, answers, "all right," does not make a binding contract not to sell goods to such wife where there is no consideration for such a contract. Wilcoxon v. Read, 95 Ill. App. 36.

ALL RIGHT AND TITLE.

Exemptions Act—Any Rightful Possession Included.

The expression "all right and title," used in section 1 of the Exemptions Act (J. & A. 5571), relating to homesteads, does not limit the right of exemption to homesteads owned in fee simple, but includes homesteads held by any rightful possession, by lease or otherwise, and all rights which the head of the family has in the premises constituting his homestead. Hartman v. Schultz, 101 Ill. 441.

ALL SPAWLS AND RUBBISH.

Covenant.

A covenant in a lease of a quarry requiring lessee to remove "all spawls and rubbish" at the expiration of the lease requires lessee to remove only such spawls and rubbish which accumulates during his tenancy, and does not require the removal of such as are left by the former tenant and which were in the quarry at the time the lease was made. Coppinger v. Armstrong, 8 Ill. App. 212.

ALL STOCKHOLDERS.

Charter of Corporation—Includes Assignees.

The expression "all stockholders," used in the charter of a corporation with reference to the liability of the stockholders for its debts, must be regarded, in the absence of any legislative indication to the contrary, as including both those who were such at the time the indebtedness was incurred, but also their assignees. Root v. Sinnock, 120 Ill. 360.

ALL TAXES FOR COUNTY PURPOSES.

City Charter—War Bounty Tax Included.

A city charter exempting all property in the city from "all taxes for county purposes," includes, by the quoted expression, a bounty tax imposed for the purpose of paying bounties to volunteers to the army during the Civil War, although at the time such charter was passed no such taxes were in contemplation. Board of Supervisors v. Campbell, 42 Ill. 492.

ALL THE COUNTS.

Criminal Law-Verdict.

Where an indictment charged defendant with illegal sales of liquor in twelve counts, and in a thirteenth count with keeping a common nuisance in the place where the liquor was sold, a verdict that defendant was guilty on "all the counts" in the indictment plainly means that defendant was guilty on every count in the indictment, and cannot be construed as a single finding on the general charge for a single offense. People v. Brown, 273 Ill. 177.

ALL THE EVIDENCE.

Certificate of Evidence.

A certificate of a trial judge that a certificate of evidence includes "all the evidence" heard on the issues raised by a cross bill is to be construed as meaning that the evidence heard in support of the bill is not included in the certificate. State Bank v. Christensen, 195 Ill. App. 499.

ALL THE INTEREST.

Decree in Chancery—Conveys Adjudicated Title.

A decree in chancery authorizing the conveyance of "all the interest" of cer-

tain parties in land does not operate as a limitation of the estate conveyed in the deed executed by virtue of the decree, or reduce such estate to a bare possibility of an estate, such as is conveyed by a quitclaim deed, but conveys a title which the court has found and which the record showed that the parties had. Harpham v. Little, 59 Ill. 513.

ALL THE MONEY.

Will—Includes Evidences of Indebtedness.

A will bequeathing "all the money" possessed by testatrix at the time of her death is to be construed as including evidence of indebtedness where it appears that at her death she has only \$2.50 in money, but owned several land purchase certificates, a United States bond, a city bond and a promissory note. Hinckley v. Primm, 41 Ill. App. 582.

ALL THE OIL AND GAS.

Grant—Conveys Oil and Gas When Found.

A grant of "all the oil and gas" in and under land is a grant of such oil and gas as the grantee may find, and does not convey title thereto till the oil or gas is found. Poe v. Ulrey, 233 Ill. 62.

ALL THE OTHER CIRCUM-STANCES APPEARING.

Instruction—Not Equivalent to "All the Evidence."

The expression "all the other circumstances appearing" in the case, as used in an instruction relating to the credibility of witnesses, is not equivalent to "all the evidence in the case," nor is it equally comprehensive or likely to be understood by the jury as meaning the same thing. Ryan v. People, 111 Ill. App. 485.

ALL THE PROPERTY.

Married Women's Act of 1861—Right of Action Included.

The expression "all the property," used in the Married Women's Act of 1861, re-

lating to the right of married women to control property owned by them, includes a right of action for personal injuries. Chicago, B. & Q. R. Co. v. Dunn, 52 Ill. 265.

ALL THE PROPERTY AND RIGHTS OF PROPERTY.

Will-Includes Every Species of Property.

A will devising "all property and rights of property, of every nature, and whether real, personal or mixed," uses very general and comprehensive words, broad enough to cover every description of vested right or interest attaching to or growing out of property, and will pass the whole property of the testator. Kinzie v. Winston, 56 Ill. 66.

ALL THE TESTIMONY.

Certificate of Evidence—"Evidence" Construed.

A certificate of evidence commencing by stating that plaintiff introduced certain "evidence," and ending with a statement that the foregoing was "all the testimony" adduced by either party at the trial, is equivalent to a certificate purporting to contain all the evidence, it being manifest that the word "testimony," used in the concluding part of the certificate, was used as synonymous with "evidence," used in the introductory part. People v. Henckler, 137 Ill. 582.

ALL USES AND PURPOSES.

Grant—Railroad Right of Way—Continuing Right.

A grant to a railroad company of a right of way for "all uses and purposes" connected with the construction, repair, maintenance and complete operation of said railroad is not exhausted by the building of surface tracks, but is a continuing right, which enables it to change its methods of construction and operation to meet the demands of a growing business and the changes wrought by the developments of society. Kotz v. Illinois C. R. Co., 188 Ill. 581.

ALL WATER PRIVILEGES.

Deed.

A deed granting premises on a river together with "all water privileges" indicates, by the quoted expression, that the grantee's rights were not intended to terminate at the river's edge, where it appears that the only water privilege connected with the land granted was that resulting from having the river as a boundary on one side. Piper v. Connelly, 108 III. 652.

ALLEGIANCE.

The tie which binds the citizen to the government, in return for the protection which the government affords him.

Natural Allegiance.

That which results from the birth of a person within the territory, and under the obedience of the government. 2 Kent. Comm. 42.

Acquired Allegiance.

That binding a citizen who was born an alien, but has been naturalized.

Local Allegiance.

That which is due from an alien while resident in a country, in return for the protection afforded by the government. 16 Wall. (U. S.) 154.

ALLEGED.

Constitution of 1870-Means Alleged in Indictment.

The word "alleged," used in section 9 of article 2 of the Constitution of 1870, relating to the venue of criminal trials, means alleged in the indictment. Watt v. People, 126 Ill. 18.

ALLEGED CODICIL.

Will-Not Intimation as to Validity of Codicil.

An instruction speaking of the "alleged codicil" in reference to the testamentary instrument which is the basis of the adding to a thing. Enc. Lond.

action does not intimate anything either way as to the validity of the codicil. Smith v. Henline, 174 Ill. 200; Campbell v. Campbell, 138 Ill. 617.

ALLEGED NEGLIGENCE.

Instructions-Refers to Negligence Alleged in Declaration.

The use of the expression "alleged negligence," in an instruction in an action for personal injuries, simply means that the court was non-committal on the question whether there was or was not negligence, and refers to the negligence alleged in the declaration. West Chicago S. R. Co. v. Petters, 196 Ill. 303.

ALLEY.

In Deed or Plat-When Meaning "Private Alley."

Where the term is used in a deed or plat, it will be taken to mean a private alley, where the word "private" is prefixed, or where the context requires a different meaning than that of a public alley. Chicago v. Borden, 190 Ill. 440.

When Construed "Public Alley."

The word "alley." appearing in a deed or plat, cannot be regarded as importing a public alley, so as to charge the local authorities with the duty of maintaining it, unless it has been legally established or accepted as such. Chicago v. Borden, 190 Ill. 440.

ALLISION.

Running one vessel against another. To be distinguished from collision, which denotes the running of two vessels against each other. The distinction is not very carefully observed, but collision is used to denote cases strictly of allision.

ALLOCATION.

An allowance upon an account in the English exchequer. Cowell. Placing or

ALLODIUM.

(Sax. a, privative, and lode or leude, a vassal; that is, without vassalage). An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. 1 Washb. Reai Prop. 16; 9 Cow. (N. Y.) 513.

It is used in opposition to feedum or fief, which means property the use of which was bestowed upon another by the proprietor, on condition that the grantee should perform certain services for the grantor, and upon the failure of which the property should revert to the original possessor.

ALLOGRAPH.

A document not written by any of the parties thereto; opposed to autograph.

ALLONGE.

(Fr.) A piece of paper annexed to a bill of exchange or promissory note, on which to write indorsements for which there is no room on the instrument itself. Pardessus, note 343; Story, Prom. Notes, §§ 121, 151.

An additional piece of paper attached to a bill or note on which indorsements are written. Fountain v. Bookstaver, 141 Ill. 466; Herring v. Woodhull, 29 Ill. 99; Farmers, etc., Co. v. Schenuit, 83 Ill. App. 273.

ALLOTMENT NOTE.

In English law. An assignment by a seaman of future wages. Such assignments are regulated by law as to form and amount, and as to the persons to whom they may be made. Mozley & W.

ALLOTMENT SYSTEM.

A system in force in England, by which the borough sanitary authorities are required to obtain, by condemnation, if necessary, lots of land, and to allot them among the laboring classes at a rent charged not to exceed what is necessary to protect the public from loss.

ALLOY, OR ALLAY.

An inferior metal used with gold and silver in making coin. The amount of alloy to be used is determined by law, and is subject to changes from time to time.

ALLUVION.

That increase of the earth on a shore or bank of a river by the force of the water, as by a current or by waves, which is so gradual that no one can judge how much is added at each moment of time. Inst. 1. 2, tit. 1, § 20; 3 Barn. & C. 91; Code Civil Annote, note 556.

At Common Law.

The addition made to land by the washing of the sea, a navigable river or other streams, whenever the increase is so gradual that it can not be perceived in any one moment of time. Lovingston v. St. Clair County, 64 Ill. 58.

ALLY.

A nation which has entered into an alliance with another nation. 1 Kent, Comm. 69.

A citizen or subject of one of two or more allied nations. 4 C. Rob. Adm. 251; 6 C. Rob. Adm. 205; 2 Dall. (Pa.) 15; Dane, Abr., Index.

ALMS.

Any species of relief bestowed upon the poor.

That which is given by public authority for the relief of the poor. Shelf. Mortm. 802, note x; Hayw. Elect. 263; 1 Doug. Elect. 370; 2 Doug. Elect. 107.

ALNAGER, OR ULNAGER.

A public sworn officer of the king, who, by himself or his deputy, looks to the assize of woolen cloth made throughout the land, and to the putting on the seals for that purpose ordained. St. 17 Rich. II. c. 2; Cowell; Blount; Termes de la Ley.

ALONE.

Criminal Law—Weight of Confession as Evidence.

It is not error to add the word "alone" to a requested instruction in a criminal case "that they should not convict on such confession" under named circumstances, the word "alone" in no way changing the force or meaning of the instruction. Bartley v. People, 156 Ill. 240.

ALONG.

By the length of, as distinguished from across. Cook County v. Great Western R. Co., 119 Ill, 225.

ALONG THE LINE.

Deed-Refers to Center Line.

A deed bounding the granted parcel "along the line" of a road refers to the center line and not to the sides of the road. Helmer v. Castle, 109 Ill. 672.

ALSO.

Likewise; in like manner; in addition to; referring to some other thing, in the same or like manner. Panton v. Tefft, 22 Ill. 375.

As Meaning "In Addition to."

The word "also" often has the meaning of "in addition to." Morrison v. Schorr, 197 Ill. 565.

Will—When "In Like Manner" Synonymons.

A will devising a life estate in certain homestead lots, and "also" certain other property, is to be construed as meaning, by the word "also," in "like manner," so as to devise a life estate also in the other property instead of a fee. Morrison v. Schorr, 197 Ill. 565; Kratz v. Kratz, 189 Ill. 280.

ALT.

(Law Fr.) In Scotch practice. An abbreviation of alter, the other; the opposite party; the defender. 1 Brown, 336, note.

ALTER OR CHANGE.

Cities and Villages Act.

The expression "alter or change," used in paragraph 30 of section 1 of article 5 of the Cities and Villages Act (J. & A. 1334), relating to the powers of cities and villages, in regard to watercourses, does not limit the municipalities to changes within the original banks of the stream, but empowers it to make an entirely new bed or course, and to divert the water from the old bed to a new one. Prairie v. Schoening, 248 Ill. 59.

ALTERATION.

Constitutes.

Not every change in a bill or note amounts to an alteration, and if the legal effect be not changed the instrument is not altered, although some change may have been made in its appearance, either by the addition of words which the law would imply or by striking out words of no legal significance. Ryan v. First, etc., 148 Ill. 353.

ALTERNAT.

A usage among diplomatists by which the rank and places of different powers, who have the same right and pretentions to precedence, are changed from time to time, either in a certain regular order, or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat. Int. Law, pt. 2, c. 3, § 4.

ALTERNATIVE.

Allowing a choice between two or more things or acts to be done.

In contracts, a party has often the choice which of several things to perform. A writ is in the alternative which commands the defendant to do the thing required, or show the reason wherefore he has not done it. Finch, 257; 3 Bl.

Comm. 273. The first mandamus is an alternative writ. 3 Bl. Comm. 111.

ALVEUS.

The bed or channel through (Lat.) which the stream flows when it runs within its ordinary channel. Calv. Lex.

Alveus derelictus, a deserted channel. 1 Mackeld. Civ. Law, 280.

AMALPHITAN TABLE.

A code of sea laws compiled for the free and trading republic of Amalphi toward the end of the eleventh century. 3 Kent, Comm. 9. It consists of the laws on maritime subjects which were or had been in force in countries bordering on the Mediterranean, and, on account of its being collected into one regular system, it was for a long time received as authority in those countries. 1 Azuni, Mar. Law, 376.

AMBASCIATOR.

A person sent about in the service of another: a person sent on a service. A word of frequent occurrence in the writers of the middle ages. Spelman.

AMBASSADOR.

In international law. A public minister sent abroad by some sovereign state or prince, with a legal commission and authority to transact business on behalf of his country with the government to which he is sent.

Ambassadors extraordinary are those employed on particular or extraordinary occasions, or residing at a foreign court for an indeterminate period. Vattel, lib. 4, c. 6, §§ 70-79.

Ambassadors ordinary are those sent on permanent missions.

An ambassador is a minister of the highest rank.

The United States were formerly represented by ministers plenipotentiary, bassador, in the diplomatic sense. 1 Kent, Comm. 39, note.

AMBIDEXTER.

(Lat.) Skillful with both hands.

Applied anciently to an attorney who took pay from both sides, and subsequently to a juror guilty of the same offense. Cowell.

AMBIGUITY.

There be two sorts of ambiguities of words; the one is ambiguitias patens, and the other latens. Patens is that which appears to be ambiguous upon the deed or instrument. Latens, that which seemeth certain and without ambiguity, for anything that appeareth on the deed or instrument, but there is some collateral matter out of the deed that breedeth the ambiguity. Rees v. Johnson, 191 Ill. App. 184; Weidman v. People, 7 Ill. App. 38.

(Lat. ambiguitas, indistinctness; dupli-Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written instrument.

Does Not Include Mere Inaccuracy.

The term does not include mere inaccuracy, or such uncertainty as arises from the use of peculiar words, or of common words in a peculiar sense (Wigram, Wills, 174; 3 Sim. 24; 3 Man. & G. 452; 8 Metc. [Mass.] 576; 13 Vt. 36. See 21 Wend. [N. Y.] 651), and intends such expressions as would be found of uncertain meaning by persons of competent skill and information (1 Greenl. Ev. § 298).

Distinguished From General Uncertainty.

It has also been confined to duplicity of meaning, and thus distinguished from general uncertainty. 2 Pars. Cont. 557, note.

Latent.

Latent ambiguity is that which arises from some collateral circumstance or sending no person of the rank of an am- | extrinsic matter in cases where the instrument itself is sufficiently certain and intelligible. 1 Gray (Mass.) 134.

Patent.

Patent ambiguity is that which appears on the face of the instrument; that which occurs when the expression of an instrument is so defective that a court of law which is obliged to put a construction upon it, placing itself in the situation of the parties, cannot ascertain therefrom the parties' intention. 4 Mass. 205; 4 Cranch (U. S.) 167; 1 Greenl. Ev. §§ 292-300.

AMBULATORY,

(Lat. ambulare, to walk about). Movable; changeable; that which is not fixed.

Ambulatoria voluntas (a changeable will) denotes the power which a testator possesses of altering his will during his lifetime.

AMENDE HONORABLE.

In English Law.

A penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offense, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck and a torch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency.

In French Law.

A punishment similar to this, and which bore the same name, was common in France. It was abolished by the law of the 25th of September, 1891. Merlin, Repert.

AMENDED.

Constitution of 1870—Miners' Act—Shot Firers' Act.

The Miners' Act is not amended by the act of 1907, known as the Shot-Firers' Act (J. & A. 7512), within the meaning of section 13 of article 4 of the Constitution of 1870, providing that no law shall be revised or "amended" by reference to its

title only, the latter act being complete in itself, and therefore not in violation of the Constitution although by implication it repeals, modifies or amends the Miners' Act. Hollingsworth v. Chicago, etc., Co., 243 Ill. 105.

AMENDMENT.

When a paper or instrument filed is so defective and so inapplicable to the requirement that no part of it can be used but that an entirely new instrument of a different purport must be filed, such new instrument cannot be said to be an amendment of the other. Illinois S. Ry. Co. v. People, 215 Ill. 126.

In Practice.

The correction, by allowance of the court, of an error committed in the progress of a cause, whether in process, pleading, proceedings, or judgment. It has been held not to include the substitution of a new pleading. 31 How. Pr. (N. Y.) 164; but see 4 Daly (N. Y.) 494.

The word "amendments," used in section 191 of the Revenue Act (J. & A. 9410) must be given its ordinary significance, and does not cover a case where the trial of an action to recover taxes a road district clerk was permitted to make and file in court a proper certificate of a tax levy for road and bridge purposes made by the highway commissioners, as required by section 63 of the Roads and Bridges Act (J. & A. 9822), to cure a defect in the levy caused by the error of the clerk in sending to the county clerk the original certificate of the levy filed with him by the commissioners, the paper originally filed with the county clerk not being the sort of paper required by the statute, and its filing not being an attempted compliance with the statute, and hence the subsequent attempt to file the proper certificate was not an amendment within the meaning of the statute. Illinois S. Ry. Co. v. People, 215 Ill. 126.

In Legislation.

An alteration or change of something proposed in a bill or established as law. The amendment of an act, ex vi termini,

AMNESTY

implies a change of its provisions upon the same subject matter to which it relates. Jones v. Lake View, 151 Ill. 673; Dolese v. Pierce, 124 Ill. 146.

AMENDS.

A satisfaction given by a wrongdoer to the party injured for a wrong committed. 1 Lilly. Reg. 81.

By St. 24 Geo. II. c. 44, in England, and by similar statutes in some of the United States, justices of the peace, upon being notified of an intended suit against them, may tender amends for the wrong alleged or done by them in their official character, and, if found sufficient, the tender debars the action. 5 Serg. & R. (Pa.) 209, 517; 4 Bin. (Pa.) 20; 6 Bin. (Pa.) 83.

AMERCEMENT.

In practice. A pecuniary penalty imposed upon an offender by a judicial tribunal.

The judgment of the court is that the party be at the mercy of the court (sit in misericordia), upon which the affeerors or, in the superior courts, the coronerliquidate the penalty. As distinguished from a fine, at the old law an amercement was for a lesser offense, might be imposed by a court not of record, and was for an uncertain amount until it had been affeered, while the amount of a fine was regulated by statute. Either party to a suit who failed was to be amerced pro clamore falso (for his false claim), but these amercements have been long since disused. 4 Bl. Comm. 379; Bac. Abr. "Fines and Amercements."

The officers of the court, and any person who committed a contempt of court, was also liable to be amerced.

AMICABLE COMPOUNDERS.

"There are two sorts of arbitrators,—
the arbitrators properly so called, and the
amicable compounders. The arbitrators
ought to determine as judges, agreeably
to the strictness of law. Amicable compounders are authorized to abate some-

thing of the strictness of the law in favor of natural equity. Amicable compounders are in other respects subject to the same rules which are provided for the arbitrators by the present title." Civ. Code La. arts. 3109, 3110.

AMICUS CURIAE.

(Lat. a friend of the court). One who, for the assistance of the court, gives information of some matter of law in regard to which the court is doubtful or mistaken. Coke, 2d Inst. 178; 2 Viner, Abr. 475. The information may extend any matter of which the court takes judicial cognizance. 8 Coke, 15.

AMNESTY.

An act of oblivion of past offenses, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period.

Express.

Express amnesty is one granted in direct terms.

Implied.

Implied amnesty is one which results when a treaty of peace is made between contending parties. Vattel, lib. 4, c. 2, §§ 20-22.

Distinguished From Pardon.

Amnesty and pardon are very different. The former is an act of the sovereign power, the object of which is to efface and to cause to be forgotten a crime or misdemeanor; the latter is an act of the same authority, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. 7 Pet. (U. S.) 160. Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness. A pardon is given to one who is certainly guilty, or has been convicted; amnesty, to those who may have been so.

ought to determine as judges, agreeably Their effects are also different. That to the strictness of law. Amicable compounders are authorized to abate someor a part of the punishment awarded by

the law,—the conviction remaining unaffected when only a partial pardon is granted. An amnesty, on the contrary, has the effect of destroying the criminal act, so that it is as if it had not been committed, as far as the public interests are concerned.

Their application also differs. Pardon is always given to individuals, and properly only after judgment or conviction. Amnesty may be granted either before judgment or afterwards, and it is in general given to whole classes of criminals, or supposed criminals, for the purpose of restoring tranquility in the state; but sometimes amnesties are limited, and certain classes are excluded from their operation. See Phil. (N. C.) 247.

AMOTION.

(Lat. amovere, to remove; to take away). An unlawful taking of personal chattels out of the possession of the owner, or of one who has a special authority in them.

A turning out the proprietor of an estate in realty before the termination of his estate. 3 Bl. Comm. 198, 199.

In Corporations.

A removal of an official agent of a corporation from the station assigned to him before the expiration of the term for which he was appointed. 6 Conn. 532.

The term is distinguished from disfranchisement, which deprives a member of all rights as a corporator. The term seems in strictness not to apply properly to cases where officers are appointed merely during the will of the corporation, and are superseded by the choice of a successor, but as commonly used includes such cases. 4 Abb. Pr. (N. S.; N. Y.) 192.

AMOUNT.

As Applied to Interest-Bearing Obligations—Including Interest.

In speaking of interest-bearing obligations the word "amount" is ordinarily used to designate the total of principal and interest. Cratty v. Chicago, 217 Ill. 456.

As Applied to Money—"Sum" Synonymous.

When applied to money, the words "amount" and "sum" must be given the same meaning. Crouch v. First, etc., Bank, 156 Ill. 357.

AMOUNT INVOLVED.

Interest During Pendency of Suit not Included.

The expression "amount involved," used in section 8 of the Appellate Court Act. (J. & A. 2968), relating to reviews by the supreme court of judgments of the appellate court, is the amount in controversy at the time the suit was brought, and does not include interest accruing during the pendency of the suit. Lydston v. Auburgh, 216 Ill. 211; Murphy v. Murphy, 207 Ill. 252; Kaiser v. Cox, 116 Ill. 28.

Appellate Court—Refers to Indebtedness.

The "amount involved" in a suit to subject property to the payment of indebtedness, within the meaning of section 8 of the Appellate Court Act (J. & A. 2968), relating to reviews by the supreme court of judgments of the appellate court, is the amount of the indebtedness and not the value of the property sought to be subjected to it, or the sum required to satisfy the judgment. Lydston v. Amburgh, 216 Ill. 211; Walker v. Malin, 94 Ill. 597.

AMOUNT OF LOSS.

In insurance. The diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance. 2 Phil. Ins. cc. 25-27; 2 Pars. Mar. Law, c. 10, \$ 1, cc. 11, 12; 9 Cush. (Mass.) 415; 1 Gray (Mass.) 371; 26 N. H. 389; 31 N. H.

238; 5 Duer (N. Y.) 1; 1 Dutch. (N. J.)

506; 6 Ohio St. 200; 5 R. I. 426; 2 Md.

217; 7 El. & Bl. 172.

AMPARO.

(Spanish). A document protecting the claimant of land till properly authorized papers can be issued. 1 Tex. 790.

AMPLIATION.

In Civil Law.

A deferring of judgment until the cause is further examined. In this case, the judges pronounced the word amplius, or by writing the letters N. L. for non liquet, signifying that the cause was not clear. It is very similar to the commonlaw practice of entering cur. adv. vult in similar cases.

AMPLIUS.

(Lat.) In the Roman law. More; further; more time. A word which the practor pronounced in cases where there was any obscurity in a cause, and the judices were uncertain whether to condemn or acquit, by which the case was deferred to a day named. Adam, Rom. Ant. 287.

ANACRISIS.

In the civil law. An investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.

ANARCHIST.

An anarch; one who excites revolt or promotes disorder in a state. Cerveny v. Chicago, etc., Co., 139 Ill. 353.

ANARCHY.

The enemy of all governments. Cerveny v. Chicago, 139 Ill. 353.

The absence of government; a state of society, where there is no law or supreme power. Spies v. People, 122 Ill. 253.

ANATOCISM.

In civil law. Taking interest on interest; receiving compound interest.

ANCESTOR.

One who has preceded another in a direct line of descent; an ascendant.

A former possessor; the person last seised. Termes de la Ley; 2 Sharswood, Bl. Comm. 201.

In the common law, the word is understood as well of the immediate parents as of those that are higher; as may appear by St. 25 Edw. III., De natis ultra mare, and by St. 6 Rich. II. c. 6, and by many others. But the civilians' relations in the ascending line, up to the great-grandfather's parents, and those above them, they term majores, which common lawyers aptly expond antecessors, or ancestors, for in the descendants of like degree they are called posteriores. Cary, Litt. 45. The term "ancestor" is applied to natural persons. The words "predecessors" and "successors" are used in respect to the persons composing a body corporate. See 2 Bl. Comm. 209; Bac. Abr.; Ayliffe, Pand. 58; Reeve, Descents.

ANCESTRAL.

What relates to or has been done by one's ancestors; as homage ancestral, and the like.

That which belonged to one's ancestors.

Ancestral estates are such as come to the possessor by descent. 2 Washb. Real Prop. 411, 412.

ANCHOR.

A measure containing ten gallons.

ANCHOR WATCH.

The lookout required to be kept on the deck of a vessel riding at anchor. See 102 U. S. 200; 29 Fed. 601.

ANCHORAGE.

A toll paid for every anchor cast from a ship in a port.

ANCIENT DEED.

Deed 80 Years Old at Time of Trial.

A deed 30 years old at the time of the trial is to be regarded as an ancient deed, although less than 30 years old when the action was brought. Reuter v. Stuckart, 181 Ill. 537.

What Constitutes.

A deed more than 30 years old must be regarded as an ancient deed. Reuter v. Stuckart, 181 Ill. 537; Whitman v. Heneberry, 73 Ill. 111; Smith v. Rankin, 20 Ill. 19.

ANCIENT DEMESNE.

Manors which, in the time of William the Conqueror, were in the hands of the crown, and are so recorded in the Domesday Book. Fitzh. Nat. Brev. 14, 56.

Tenure in ancient demesne may be pleaded in abatement to an action of ejectment. 2 Burrows, 1046.

Tenants of this class had many privileges. 2 Sharswood, Bl. Comm. 99.

ANCIENT HOUSE.

One which has stood long enough to acquire an easement of support. 3 Kent, Comm. 437; 2 Washb. Real Prop. 74, 76. See "Easement."

ANCIENT LIGHTS.

Windows or openings which have remained in the same place and condition twenty years or more. 5 Har. & J. (Md.) 477; 12 Mass. 157, 220.

In England.

A right to unobstructed light and air through such openings is secured by mere user.

In the United States.

Such right is not acquired without an express grant, in most of the states. 2 Washb. Real Prop. 62, 63; 3 Kent, Comm. 446, note. See 11 Md. 1. See "Air."

ANCIENT READINGS.

Essays on the early English statutes. Co. Litt. 280.

ANCIENT RENT.

The rent reserved at the time the lease was made, if the building was not then under lease. 2 Vern. 542.

ANCIENT SERJEANT.

In English law. The eldest of the queen's serjeants.

Serjeants were distinguished as ancient and puisne.

ANCIENT WRITINGS.

Deeds, wills, and other writings, more than thirty years old.

ANCIENTS.

Gentlemen in the Inns of Courts who are of a certain standing.

In the Middle Temple, all who have passed their readings are termed "ancients." In Gray's Inn, the ancients are the oldest barristers; besides which, the society consists of benchers, barristers, and students. In the Inns of Chancery, it consists of ancients and students or clerks.

ANCILLARY.

(Lat. ancilla, a handmaid). Auxiliary; subordinate.

ANCIPITIS USUS.

(Lat.) Useful for various purposes.

As it is impossible to ascertain the final use of an article ancipitis usus, it is not an injurious rule which deduces the final use from its immediate destination. 1 Kent, Comm. 140.

AND.

A co-ordinate conjunction. La Salle v. Kostka, 190 Ill. 137.

A copulative conjunction. Ex parte Bollig, 31 Ill. 95.

Common Meaning.

In addition to. Tipton v. People, 156 Ill. 244.

Expressing relation of Addition.

The word "and" is not explanatory, but signifies and expresses the relation of addition. La Salle v. Kostka, 190 Ill. 137.

Indicates Continuation.

The word "and" indicates a continuation of what has gone before. Winter v. Bibble, 251 Ill. 218.

Dramshop Act—When Construed "In Addition to."

The word "and," used in section 1 of the act of 1887 (J. & A. 4619), relating to the sale of liquor outside cities, and prohibiting such sale in any quantity less than five gallons "and" in the original packages, etc., means in addition to the prohibition against sales even in that quantity except in the original packages. Tipton v. People, 156 Ill. 244.

When Construed "Or"-Statute.

The word "and," when used in a statute, may be construed "or," when necessary to effectuate the plain intent of the legislature, or where the meaning or the context requires it. Sangamon, etc., District v. Eminger, 257 Ill. 287; People v. Van Cleave, 187 Ill. 133; Ayers v. Chicago, etc., Co., 187 Ill. 56; Sturgeon Bay, etc., Co. v. Leatham, 164 Ill. 243; Chicago, B. & Q. R. Co. v. Bartlett, 120 Ill. 611; People v. Lee, 112 Ill. 117; Sturgeon Bay, etc., Co. v. Leatham, 62 Ill. App. 387.

When not Construed "Or"—Cities and Villages Act.

The word "and," used in subdivision 46 of section 1 of article 5 of the Cities and Villages Act (J. & A. 1334) empowering cities, villages and towns to "license, regulate, and prohibit the sale of intoxicating liquor," is not to be construed "or." People v. Cregier, 138 Ill. 416.

AND WARRANTS.

Conveyances Act—Statutory Definition.

A mortgage using the word "and warrants" is to be construed as though full covenants of seizin, good right to convey against encumbrances, of quiet enjoyment and general warranty were fully written therein as provided by section 9 of the same act (J. & A. 2240). Conveyances Act 11; King v. King, 215 Ill. 114; Roderick v. McMeekin, 204 Ill. 636.

ANDROLEPSY.

The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former. Wolff. Inst. § 1164; Molloy de Jur. Mar. 26.

ANGARIA.

In Roman Law.

A service or punishment exacted by government. They were of six kinds, viz., maintaining a post station where horses are changed; furnishing horses or carts; burdens imposed on lands or persons; disturbance, injury, anxiety of mind; the three or four day periods of fasting observed during the year; saddles or yokes borne by criminals from county to county, as a disgraceful mode of punishment among the Germans or Franks. Du Cange.

In Feudal Law.

Any troublesome or vexatious personal service paid by the tenant to his lord. Spelman.

ANGEL.

An ancient English coin, of the value of ten shillings sterling. Jacob.

ANGILD, ANGYLDE, OR ANGELD.

(Sax. from an, one, and gild, a payment or satisfaction). The single value of a man or other thing; the compensation for a thing according to its single value or estimation." See "Trigild;" Spelman. The rate fixed by law at which injuries to person or property were to be paid for. Also the fixed price at which cattle and other goods were received as currency. Wharton.

ANGLESCHERIA.

In old English law. Englishery; the fact of being an Englishman. Fleta, lib. 1, c. 30; Bracton uses "Englesheria" (iol. 135).

Under Canute and William the Conquerer, for the protection of their subjects from assassination, a heavier fine was imposed on the vill or hundred for the killing of a Dane or Norman than for the killing of a native. It was an object, therefore, for the hundred to prove Anglescheria to relieve itself from the added penalty. Anglescheria was abolished by St. 14 Edw. III. c. 4. 4 Bl. Comm. 195.

ANGLICE.

In English. A term formerly used in pleading when a thing is described both in Latin and English, inserted immediately after the Latin, and as an introduction of the English translation.

ANGUISH.

Pain of mind. Tomasi v. Donk, etc., Co., 257 Ill. 75.

Instructions—Refers to Physical Suffering.

The word "anguish," as used in an instruction in an action for personal injuries relating to the measure of damages, refers to physical suffering, and does not authorize the jury to allow damages for mental suffering or humiliation. Evanston v. Richards, 224 Ill. 447.

ANIMAL

Any animate being which is not human, endowed with the power of voluntary motion.

Domitae are those which have been tamed by man; domestic.

Ferae naturae are those which still retain their wild nature.

Mansuetae naturae, those which are tame by nature.

ANIMALS OF A BASE NATURE.

Those animals which, though they may be reclaimed, are not such that at common law a larceny may be committed of them, by reason of the baseness of their nature. Some animals which are now usually tamed come within this class, as dogs and cats; and others which, though wild by nature, and often reclaimed by art and industry, clearly fall within the same rule, as bears, foxes, apes, monkeys, ferrets, and the like. Coke, 3d Inst. 109; 1 Hale, P. C. 511, 512; 1 Hawk. P. C. 33, § 36; 4 Bl. Comm. 236; 2 East, P. C. 614. See 1 Wm. Saund. 84, note 2.

ANIMO.

(Lat.) With intention.

Animo is used in combination in the same manner as animus (q. v.). Thus, animo furandi, with intent to steal, etc

ANIMUS.

(Lat. mind). The intention with which an act is done.

Animus Cancellandi.

An intention to destroy or cancel. See "Cancellation."

Animus Caplendi.

The intention to take. 4 C. Rob. Adm. 126, 155.

Animus Dedicandi.

The intention of donating or dedicating.

Latin words definable as "the intention to dedicate." Fisk v. Havana, 88 Ill. 210; Harding v. Hale, 61 Ill. 200.

Animus Defamandi.

The intention of defaming.

Animus Derelinquendi.

The intention of abandoning. 4 C. Rob. Adm. 216.

Animus Differendi.

The intention of delaying.

Animus Donandi.

The intention of giving.

Animus Felonico.

Felonious intent.

Animus Furandi.

The intention to steal.

In order to constitute larceny, the thief must take the property animo furandi; but this is expressed in the definition of larceny by the word "felonious." 3 Inst. 107; Hale, P. C. 503; 4 Bl. Comm. 229. See 2 Russ. Crimes, 96; 2 Tyl. Comm. 272. When the taking of property is lawful, although it may afterwards be converted animo furandi to the taker's use, it is not larceny. Bac. Abr. "Felony" (C); 14 Johns. (N. Y.) 294; Ryan & M. 137, 160; Principles of Penal Law, c. 22, § 3, pp. 279, 281.

Animus Lucandi.

The intent to gain a profit. 3 Kent. Comm. 357.

Animus Manendi.

The intention of remaining.

To acquire a domicile, the party must have his abode in one place, with the intention of remaining there; for, without such intention, no new domicile can be gained, and the old will not be lost. See "Domicile."

Animus Morandi.

The intention to remain, or to delay.

Animus Possidendi.

The intention of possessing.

Animus Quo.

The intent with which.

Animus Recipiendi.

The intention of receiving.

A man will acquire no title to a thing unless he possesses it with an intention of receiving it for himself; as, if a thing be bailed to a man, he acquires no title.

Animus Recuperandi.

The intention of recovering. Locc. de Jur. Mar lib. 2, c. 4, § 10.

Animus Republicandi.

The intention to republish.

Animus Restituendi.

The intention of restoring.

Animus Revertendi.

The intention of returning.

A man retains his domicile if he leaves it animo revertendi. 3 Rawle (Pa.) 312; 4 Bl. Comm. 225; 2 Russ. Crimes, 18; Poph. 42, 52; 4 Coke, 40. See "Domicile."

Animus Testandi.

An intention to make a testament or will.

This is required to make a valid will; for, whatever form may have been adopted, if there was no animus testandi, there can be no will. An idiot, for example, can make no will, because he can have no intention.

ANN, OR ANNAT.

In Scotch law. Half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, or child, or next of kin, after his decease. Whishaw; Bell, Dict. See Ersk. Inst. bk. 2, tit. 10, §§ 65-67.

ANNATES.

In ecclesiastical law. First fruits paid out of spiritual benefices to the pope, being the value of one year's profit.

ANNEXATION.

(Lat. ad, to nexare, to bind). The union of one thing to another.

It conveys the idea, properly, of fastening a smaller thing to a larger; an incident to a principal. It has been applied to denote the union of Texas to the United States.

Actual.

Actual annexation includes every movement by which a chattel can be joined or united to the freehold.

Constructive.

Constructive annexation is the union of such things as have been holden parcel of the realty, but which are not actually annexed, fixed, or fastened to the free-hold. Shep. Touch. 469; Amos & F. Fixt. 2. See "Fixtures."

ANNEXED.

Revenue Act—Physical Annexation not Required.

A collector's warrant is sufficiently "annexed" to the collector's book, within the meaning of section 136 of the Revenue Act (J. & A. 9355), by being laid between its covers without being attached in any physical way. Loehr v. People, 132 Ill. 511.

ANNO DOMINI.

(Lat. the year of our Lord; abbreviated A. D.) The computation of time from the incarnation of Jesus Christ.

The Jews began their computation of time from the creation; the Romans, from the building of Rome; the Mohammedans, from the Hegira, or flight of the prophet; the Greeks reckoned by Olympiads; but Christians everywhere reckon from the birth of Jesus Christ.

In a complaint, the year of the alleged offense may be stated by means of the letters "A. D.," followed by words expressing the year. 4 Cush. (Mass.) 596. But an indictment or complaint which states the year of the commission of the offense in figures only, without prefixing the letters "A. D.," is insufficient. 5 Gray (Mass.) 91. The letters "A. D.," followed by figures expressing the year, have been held sufficient in several states. 3 Vt. 481; 1 G. Greene (Iowa) 418; 35 Me. 489; 1 Bennett & H. Lead. Cr. Cas. 512.

ANNONA.

(Lat.) Barley; corn; grain; a yearly contribution of food, of various kinds, for support.

Annona porcum, acorns; annona frumentum hordeo admixtum, corn and barley mixed; annona panis, bread, without reference to the amount. Du Cange; Spelman; Cowell.

The term is used in the old English law, and also in the civil law quite generally, to denote anything contributed by one person towards the support of another; as, si quis mancipio annonam

dederit, if any shall have given food to a slave. Du Cange; Spelman.

ANNONAE CIVILES.

Yearly rents issuing out of certain lands, and payable to monasteries.

ANNOTATION.

In civil law.

- (1) The answers of the prince to questions put to him by private persons respecting some doubtful point of law. See "Rescript."
 - (2) Summoning an absentee. Dig. 1. 5.
- (3) The designation of a place of deportation. Dig. 32, 1, 3.

ANNOUNCEMENT.

The act of announcing or giving public notice; that which announces; proclamation; publication. Dooley v. Van Hohenstein, 170 Ill. 634.

ANNUAL.

Contract.

A contract for an "annual" salary of \$1,800 per year is a contract for an annual salary of such amount, payable in monthly instalments, where the parties by their conduct have so construed it. Tait, etc., Co. v. Tinsman, 138 Ill. App. 78.

ANNUAL PENSION.

In Scotch law. Annual rent or profit.

ANNUAL RENT.

In Scotch law. Interest.

To avoid the law against taking interest, a yearly rent was purchased, hence the term came to signify interest. Bell, Dict.; Paterson, Comp. §§ 19, 265.

ANNUAL TAX FOR STATE PURPOSES.

Railroad Charter.

one person towards the support of another; as, si quis mancipio annonam Central Railroad Company, providing

that an "annual tax for state purposes" shall be levied, etc., means that the property and assets of the company shall bear the burden of ordinary state taxes. People v. Illinois C. R. Co., 273 Ill. 238.

ANNUAL TAXES.

Will—Special Assessments Not Included. A direction in a will that "the annual taxes" shall be paid before one-third of the income shall belong to the wife is not a direction to pay special assessments. Warren v. Warren, 148 Ill. 652.

ANNUITIES OF TIENDS.

In Scotch law. Annuities of tithes. The yearly tax or allowance to the crown on tithes not set apart for pious

ANNUITY.

(Lat. annuus, yearly.) A yearly sum stipulated to be paid to another in fee, or for life, or years, and chargeable only on the person of the grantor. Co. Litt. 144b; 2 Bl. Comm. 40; Lumley, Ann. 1; 5 Mart. (La.) 312; Dav. Ir. 14.

Distinguished From Rent Charge.

An annuity is different from a rent charge, with which it is sometimes confounded,—the annuity being chargeable on the person merely, and so far personalty, while a rent charge is something reserved out of realty, or fixed as a burden upon the estate in land. 2 Sharswood, Bl. Comm. 40; Rolle, Abr. 226; 10 Watts (Pa.) 127.

Broad Meaning-As Chargeable on Real

In a broad sense the word "annuity" is used to designate a fixed sum, payable periodically, subject to such limitations as the grantor may impose, and which may be charged on real estate as well as personal property. Routt v. Newman, 253 Ill. 188.

Technical Meaning.

A certain yearly sum granted to a per-

able only on the person of the grantor. Routt v. Newman, 253 Ill. 188.

Annuity in Fee.

An annuity in fee is said to be a personal fee; for, though transmissible, as is real estate of inheritance (Amb. 782), liable to forfeiture as a hereditament (7 Coke, 34a), and not constituting assets in the hands of an executor, it lacks some other characteristics of realty.

Conveyance.

It cannot be conveyed by way of use (2 Wils. 224), is not within the statute of frauds, and may be bequeathed and assigned as personal estate (2 Ves. Sr. 70; 4 Barn. & A. 59; Roscoe, Real Actions, 35, 68; 3 Kent, Comm. 460).

Curtesy and Dower In.

The husband is not entitled to curtesy, nor the wife to dower, in an annuity. Co. Litt. 32a.

ANNUITY TAX.

An impost levied annually in Scotland for the maintenance of the ministers of religion. Abolished 33 & 34 Vict. c. 87.

ANNULUS.

(Lat.) In old English law. A ring: the ring of a door. Per haspam vel annulum hostii exterioris, by the hasp or ring of the outer door. Fleta, lib. 3, c. 15, § 5.

ANNUS.

(Lat.) In civil and old English law. A year; the period of three hundred and sixty-five days. Dig. 40. 7. 4. 5; Bracton, fol. 359. See "Year."

ANNUS DELIBERANDI.

(Lat.) In Scotch law. A year of deliberating; a year to deliberate. year allowed by law to the heir to deliberate whether he will enter and represent his ancestor. It commences on the death son in fee or for life or for years, charge- | of the ancestor, unless in the case of a

posthumous heir, when the year runs from his birth. Bell, Dict.

ANNUS LUCTUS.

(Lat.) The year of mourning. Code, 5. 9. 2.

It was a rule among the Romans, and also the Danes and Saxons, that the widows should not marry infra annum luctus (within the year of mourning). 1 Sharswood, Bl. Comm. 457.

ANNUS UTILIS.

A year made up of available or serviceable days. Brissonius; Calv. Lex.

ANOMALOUS PLEA.

A plea not pure, relying upon matters stated in the record. Palmer v. Wood, 48 Ill. App. 634.

ANONYMOUS.

Without name. Books published without the name of the author are said to be anonymous. Cases in the reports of which the names of the parties are not given are said to be anonymous.

ANSWER.

In Chancery.

A defense in writing, made by a defendant to the charges contained in a bill or information filed by the plaintiff against him in a court of equity.

Function.

The office of an answer to a bill is to deny the allegations of a bill in equity, or to set up some affirmative matter as a defense. Dunne v. Rock Island County, 273 Ill. 57.

In Code Pleading.

The defendant's pleading in any civil action.

In Practice.

The statement of a witness in response to a question.

ANTENATI.

(Lat. born before). Those born in a country before a change in its political condition such as to affect their allegiance.

The correlative term is postnati.

In the United States.

It ordinarily denotes those born in this country prior to the Declaration of Independence. See 7 Wheat. (U. S.) 535.

In England.

It ordinarily denotes those born before the union with Scotland.

ANTI MANIFESTO.

The declaration of the reasons which one of the belligerents publishes, to show that the war as to him is defensive. Wolfflus, § 1187.

ANTICHRESIS.

(Lat.) In civil law. An agreement by which the debtor gives to the creditor the income from the property which he has pledged, in lieu of the interest on his debt. Guyot, Rep. Univ.

It is analogous to the Welsh mortage of the common law. In the French law, if the income was more than the interest, the debtor was entitled to demand an account of the income, and might claim any excess. Civ. Code La. art. 2085. See Dig. 20. 1. 11; Id. 13. 7. 1; Code, 8. 28, 1; 11 Pet. (U. S.) 351; 1 Kent, Comm. 137.

ANTICIPATION.

(Lat. ante, before, capere, to take). The act of doing or taking a thing before its proper time.

In Deeds of Trust.

In deeds of trust there is frequently a provision that the income of the estate shall be paid by the trustec as it shall accrue, and not by way of anticipation. A payment made contrary to such provision would not be considered as a discharge of the trustee.

Use in the present of what is to accrue; dealing with income before it is due. Gray v. Board of School Inspectors, 231 Ill. 74; Gray v. Board of School Inspectors, 135 Ill. App. 502.

ANTIQUARE.

In the Roman law. To restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law. wrote on their ballots the letter "A," the initial of antiquo, I am for the old law. Calv. Lev.

ANTIQUUM DOMINICUM.

In old English law. Ancient demesne, contrasted with novum perquisitum, new purchase or acquest. Fleta, lib. 2, c. 71, § 15.

ANTITHETARIUS.

In old English law. A man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver in this, that the latter does not charge the accuser, but others. Jacob.

ANTRUSTIO, OR AMTRUSTIO.

In early feudal law. A confidential vassal. A term applied to the followers of the ancient German chiefs, and of the kings and counts of the Franks. Spelman.

ANY.

Some; an indefinite number or quantity. West Chicago, etc., Commissioners v. McMullen, 134 Ill. 179.

One out of many. Mullin v. Spangenberg, 112 Ill. 144.

"All"-"Every" Synonymous.

The word "any" is used as synonymous with "all" or "every." People v. Van Cleave, 187 Ill. 134.

ANY ACT OF SELF DESTRUCTION.

Insurance—Involuntary Act Not Included.

The expression "any act of self destruction," as used in insurance policies, does not include the involuntary destruction of one's self. New, etc., Ass'n v. Hagler, 29 Ill. App. 438.

ANY ADDITIONS, CHANGES OR ALTERATIONS.

Construction Contract—Refers to Incidental Changes.

A construction contract providing for "any additions, changes or alterations" refers to such as may be incidental to the complete execution of the work as described in the plans and specifications, and are of minor and trifling importance, and does not include any material departure from such plans and specifications, resulting in a new and substantially different undertaking. Cook County v. Harms, 108 Ill. 159.

ANY AGENT OF SAID COMPANY.

Practice Act—Vice President of Corporation Included.

The expression "any agent of said company," used in section 4 of the Practice Act of 1874, now section 8 of the Practice Act (J. & A. 8545), relating to service of process on corporations, includes the vice president of a corporation. Cook v. Imperial, etc., Co., 152 Ill. 640.

ANY BENEFICIAL DEVISE, LEGACY OR INTEREST.

Wills Act—Interest of Executor Included.
Section 8 of the Wills Act, providing that where a will gives "any beneficial devise, legacy or interest" to one who acted as witness to such will, such devise, legacy or interest shall be void unless such will is validly attested without such witness, includes by the quoted expression, the interest of an executor named in the will. Jones v. Grieser, 238 Ill. 188.

Interest of Executor's Wife Included.

Section 8 of the Wills Act (J. & A. 11549), providing that where persons

having "any beneficial devise, legacy or interest" under a will act as witnesses to such will, such devise, legacy or interest shall be avoided, includes, by the quoted expression, the wife of an executor named in the will. Fearn v. Postlethwaite, 240 Ill. 631.

ANY BILLS OR NOTES.

Statute-Certificate of Deposit.

A paper whereby the cashier of a bank acknowledges that the bank has received a deposit to the creditor of the depositor of a named amount "payable in like funds on the return of this certificate, duly indorsed, four months after date" is a promissory note within the meaning of the act of 1851 providing that no banking association shall put into circulation "any bills or notes" of such association or banker, unless the same shall be payable on demand. Bank of Peru v. Farnsworth, 18 Ill. 565.

ANY BOX, PACKAGE OR THING.

Shipping Receipt—May Include Several Packages.

A shipping receipt limiting liability on "any box, package or thing" to a named amount will embrace several distinct packages included in the shipment, so that the shipper may recover the value of each package, or the amount to which liability is limited on each package, in case such value exceeds such limitation. Boscowitz v. Adams, etc., Co., 93 Ill. 529.

ANY CANAL.

Constitution of 1870—Refers to Illinois and Michigan Canal.

The words "any canal," used in separate section 3 of the Constitution of 1870, has reference only to the Illinois and Michigan Canal, being the only canal owned by the state, the word "any" being introduced in order to apply to any other canal of which the state might afterwards become the owner. Burke v. Snively, 208 Ill. 341.

ANY CASUALTY OR ACCIDENT.

Cities and Villages Act.

The expression "any casualty or accident," used in section 3 of article 7 of the Cities and Villages Act (J. & A. 1362), relating to the expenditure by municipalities of money in excess of the annual appropriations, does not include the necessity for additional light for an elevated railroad built by a city, and the additional cost of such light due to an unlawful combination of gas and electric light companies. Chicago v. Nicholas, 177 Ill. 103.

ANY CORPORATE OR MUNICIPAL AUTHORITY.

Eminent Domain Act-Includes County.

The expression "any corporate or municipal authority," used in section 2 of the Eminent Domain Act (J. & A. 5282), relating to the determination of compensation for property taken for public use, includes a county. Mercer County v. Wolff, 237 Ill. 77.

ANY CORPORATION.

Constitution of 1870—Refers to Private Corporations.

Section 22 of article 4 of the Constitution of 1870, prohibiting the passage of local laws granting special privileges and immunities to "any corporation, association or individual," refers, by the expression "any corporation," to private corporations and not to municipal corporations. People v. Rinaker, 252 Ill. 273.

ANY CORPORATION, ASSOCIATION OR INDIVIDUAL.

Constitution of 1870—State Board of Health Not Included.

The expression "any corporation, association, or individual," used in section 22 of article 4 of the Constitution of 1870, relating to the passage of special laws, does not include the State Board of Health. People v. Dunn, 255 Ill. 291.

ANY COURT OF COMPETENT JURISDICTION.

Attorneys and Councillors Act—Includes All Courts of Record.

The expression "any court of competent jurisdiction," used in section 1 of the act of 1909 (J. & A. 611), known as the Attorneys' Lien Act, includes any court record, either of law or chancery. Standidge v. Chicago Rys. Co., 254 Ill. 533.

ANY CRIMINAL CASE.

Federal Constitution — Constitution of 1870.

The fifth amendment of the Constitution of the United States, providing that "no person shall be compelled, in any criminal case, to be a witness against himself," and section 2 of article 10 of the Constitution of 1870, providing that "no person shall be compelled in any criminal case to give evidence against himself," extend to and include, by the expression "any criminal case," imprisonment, fine, forfeiture and penalty, whether to be recovered in a criminal or civil proceeding. People v. Butler, etc., Foundry, 201 Ill. 254.

ANY DANGEROUS CONDITION.

Miners' Act—Includes All Dangerous Conditions in Mine.

The expression "any dangerous condition," used in section 18 of the Miners' Act of 1899, does not, under the doctrine of ejusdem generis, limit the dangerous condition to those expressly specified in the act, and those of the same kind as those specified, but extends to dangerous conditions in the track, roadbed and sides of the entries, and all dangerous conditions which may exist in a coal mine which endanger the life, limb or health of miners, whether such conditions are of a permanent character or are due to a faulty construction or to operation. Mengelkamp v. Consolidated, etc., Co., 259 Ill. 309; Mertens v. Southern, etc., Co., 235 Ill. 545; Dunham v. Black Diamond, etc., Co., 239 Ill. 460.

ANY DECREE OR JUDGMENT CREDITOR.

Judgments, Decrees and Executions Act.

The expression "any decree or judgment creditor," used in section 20 of the Judgments, Decrees and Executions Act (J. & A. 6766), relating to redemptions from sales on execution, means a creditor having a decree or judgment upon which execution may issue at the time he seeks to redeem, without regard to the time when it may have been recovered. Meier v. Hilton, 257 Ill. 184.

ANY EXISTING LIEN.

Liens Act—Refers to Time of Beginning Work.

The expression "any existing lien," used in the second proviso of section 3 of the act of 1872 (J. & A. 7185), relating to liens upon railroads, refers to liens existing at the time of beginning the work sought to be liened for. St. Louis & P. R. Co. v. Kerr, 153 Ill. 194.

ANY INCORPORATED CITY.

Parks Act—Includes All Cities Having Parks.

The expression "any incorporated city," used in section 1 of the act of 1879 (J. & A. 8079), relating to drives to public parks, includes all cities having a park or parks within their territorial limits. West Chicago, etc., Commissioners v. McMullen, 134 Ill. 179.

ANY INDEBTEDNESS.

Constitution of 1870—Means Indebtedness Due in Future.

The expression "any indebtedness," used in section 12 of article 9 of the Constitution of 1870, relating to municipal corporations, refers to that species or character of indebtedness which does not fall due till a future time, and which bears interest, and does not include current indebtedness or obligations the payment of which is not deferred to a fixed period and is not interest bearing. Kankakee v. McGrew, 178 Ill. 79.

ANY INSTALLMENT.

Local Improvements Act.

Section 99 of the Local Improvements Act (J. & A. 1495), providing that laws in force at the time the act takes effect shall continue to apply to certain proceedings but "when any installment of an assessment confirmed under prior acts shall mature," proceedings in relation thereto shall conform to the later act, includes, by the expression "any installment," the whole or any part of an assessment so confirmed, and assessment for the whole cost of the improvement in one payment. Cummings v. People, 211 Ill. 402.

ANY INTOXICATING LIQUOR.

Dramshop Act — Includes Beer, Hard Cider or Whiskey.

The expression "any intoxicating liquor," used in section 2 of the Dramshop Act (J. & A. 4601), is not limited to any particular kind or variety of liquor, and means liquor which will intoxicate, whether hard cider, whiskey or beer. Hewitt v. People, 87 Ill. App. 370.

ANY KIND OF INSURANCE BUSINESS.

Insurance Act—Includes All Kinds of Insurance.

The expression "any kind of insurance business," used in section 1 of the act of 1879 (J. & A. 6328), relating to foreign insurance companies, applies to all kinds of insurance, the only implied limitation being that the insurance business transacted shall be such as authorized by the charter of the company, or the articles of corporation and law under which it is organized. People v. Fidelity, etc., Co., 153 Ill. 36.

ANY LOSS, INJURY OR DAMAGE.

Bill of Lading—"Damage" Not Synonymous with "Loss."

A bill of lading providing that the carrier shall be liable for "any loss, injury or damage" does not use the word "loss" as synonymous with "damage,"

the first referring to a total loss, and the latter to a partial loss. Christensen v. Chicago, M. & St. P. Ry. Co., 194 Ill. App. 564.

ANY NEIGHBORHOOD OR FAMILY.

Criminal Code.

Section 112 of the Criminal Code of 1845, now section 56 of division 1 of the Criminal Code (J. & A. 3590), prohibiting the malicious or wilful disturbance of the peace or quiet of "any neighborhood or family" in certain ways, is intended to protect all persons from unlawful annoyances in their abodes at night, and is violated where persons assemble and fire pistols outside the window of a house occupied by a woman who lived there alone while her husband was in the army, such acts being a disturbance both to her "neighborhood" and her "family," within the meaning of the statute. Noe v. People, 39 Ill. 97.

ANY NEWSPAPER.

Notices Act—National Corporation Reporter Included.

The expression "any newspaper," used in section 1 of the Notices Act (J. & A. 7853), includes the National Corporation Reporter. Maass v. Hess, 41 Ill. App. 282.

ANY OF THE ANIMALS, WILD FOWL OR BIRDS.

Game Act—Game Taken Outside State Included.

The expression "any of the animals, wild fowl or birds," used in section 6 of the Game Act (J. & A. 5908), relating to selling and exposing game birds for sale, is not limited in its application to game killed or taken within this state. Merritt v. People, 169 Ill. 222; Magner v. People, 97 Ill. 330.

ANY OFFENSE.

In an action against police officers for assault and battery, where the defense

was that plaintiff assaulted defendants and interfered with them in the discharge of their duty, etc., and that the assault sought to be recovered for was in the process of arresting plaintiff for such offense, an instruction that the jury shall find defendants guilty if plaintiff has not committed "any offense" charged in defendants' pleas uses the word "any" in the sense of "no one of" and not in the sense of "one out of many," as the word is defined in Webster's Dictionary. Mullin v. Spangenberg, 112 Ill. 144.

ANY OTHER CREDITOR.

Section 24 of the Liens Act of 1845, now section 7 of the Liens Act (J. & A. 7145), providing that no creditor shall be allowed to enforce the statutory lien against "any other creditor" unless, etc., refers, by the quoted expression, to a creditor who may have a lien for labor or materials, and does not refer to general creditors. Shaeffer v. Weed, 8 Ill. 515.

ANY OTHER CONTRACT OR AGREEMENT FOR INSURANCE.

A fire insurance policy providing that it should be void if the assured or other persons interested should take out "any other contract or agreement for insurance" on the insured premises during the life of the policy does not include insurance procured by the grantee of the purchaser at a mortgagee's sale, said grantee claiming an insurable interest in the property, and having no interest in the policy sued on. Niagara, etc., Co. v. Scammon, 144 Ill. 499.

ANY OTHER GAME OR GAMES.

The words "any other game or games," used in section 131 of the Criminal Code (J. & A. 3734), are broad enough to include athletic and other games of muscular strife, as well as games of hazard and skill played with instruments, horse racing, dog fights, foot racing and cock fighting. Swigart v. People, 154 Ill. 291.

ANY OTHER MEANS, INSTRU-MENT OR DEVICE.

Section 98 of division 1 of the Criminal Code (J. & A. 3655), prohibiting obtaining money or property by false or bogus checks "or any other means, instrument or device," commonly called the confidence game, is intended to include, by the expression quoted, any other means, instrument or device, beside the use of false or bogus checks, which come within the meaning of what is commonly called the confidence game. Maxwell v. People, 158 Ill. 254.

ANY OTHER PERSON.

Garnishment Act-Carrier Not Included.

The expression "any other person," used in section 1 of the Garnishment Act (J. & 'A. 5936), does not include a common carrier who is indebted to defendant. Michigan C. R. Co. v. Chicago, M. S. L. R. Co., 1 Ill. App. 407.

ANY OTHER PERSON OR PARTIES INTERESTED.

Fire Insurance.

A fire insurance policy providing that it shall be void if the assured or "any other person or parties interested" shall obtain other insurance on the property insured, includes by the expression quoted, only persons or parties interested in the insurance and does not include the grantee of the purchaser at a mortgagee's sale which grantee has no interest in the policy sued on. Niagara, etc., Co. v. Scammon, 144 Ill. 499.

ANY OTHER PURPOSE.

Township Organization Act of 1845.

The Township Organization Act of 1845, empowering towns to lay taxes for certain named purposes and for "any other purpose" they may deem necessary must be construed as authorizing, by the quoted expression, only purposes of the same general scope and character of those expressly enumerated. Drake v. Phillips, 40 Ill. 394.

ANY PART OF ANY INCOR-PORATED CITY.

Parks Act.

Section 1 of the act of 1879 (J. & A. 8079), empowering park commissioners to connect public parks with "any part of any incorporated city" in certain ways, includes, by the quoted expression, power to connect such parks with such parts of the city as public convenience may demand. West Chicago, etc., Commissioners v. McMullen, 134 Ill. 179.

ANY PERSON.

Architects Act—Includes All Who Construct Buildings.

The expression "any person," used in section 9 of the act of 1897 (J. & A. 483), defining the word "architect," includes mechanics, builders, and all others constructing buildings, either by themselves or by their employees. People v. Lower, 251 Ill. 530.

Federal Constitution-Includes Woman.

The expression "any person," used in section 1 of the fourteenth amendment of the Constitution of the United States, includes a woman. Ritchie v. People, 155 Ill. 112.

ANY PERSON INTERESTED.

Administration Act—Includes Non-Resident Creditor.

The expression "any person interested," used in section 46 of the Administration Act (J. & A. 95), relating to the commitment of administration to public administrators, includes a non-resident creditor. Strong v. Dignan, 207 Ill. 393; Branch v. Rankin, 108 Ill. 447; Rosenthal v. Renick, 44 Ill. 207.

Wills Act — Beneficiary Under Former Will Included.

The expression "any person interested," used in section 7 of the Wills Act (J. & A. 11548), relating to contesting wills by bill in chancery, includes a beneficiary in a will of which probate is denied because of the production of a later will revoking such former will. Adams v. First, etc., Church, 251 Ill. 274.

Devisee Included.

The expression "any person interested," used in section 7 of the Wills Act (J. & A. 11548), relating to contesting wills by bill in chancery, includes a devisee. Jele v. Lemberger, 163 Ill. 345; Wolf v. Bollinger, 62 Ill. 371.

Heir of Devisee Not Included.

The expression "any person interested," used in section 7 of the Wills Act (J. & A. 11548), relating to the contesting of wills by bill in chancery, does not include the heir of a devisee. Storrs v. St. Luke's Hospital, 180 Ill. 372.

Non-Resident Alien Not Included.

The expression "any person interested," used in section 7 of the Wills Act (J. & A. 11548), does not include a non-resident alien who is incapable of taking or holding real estate in Illinois by descent or otherwise. Jele v. Lemberger, 163 Ill. 345.

Non-Resident Citizen Included.

The expression "any person interested," used in section 7 of the Wills Act (J. & A. 11548), relating to contesting wills by bill in chancery, is used generally and without limitation and does not confine the right to citizens of this state. Branch v. Rankin, 108 Ill. 444.

Direct Existing Pecuniary Interest.

The expression "any person interested," used in section 7 of the Wills Act (J. & A. 11548), relating to the contesting of wills by bill in chancery, means a person interested in the settlement of an estate, who will be directly interested in a pecuniary way by its settlement and by the probate of the will, the reference being to an interest existing at the time of such probate and not to one subsequently acquired. Cassem v. Prindle, 258 Ill. 16; Selden v. Illinois, etc., Bank, 239 Ill. 75; McDonald v. White, 130 Ill. 497.

ANY PLACE LICENSED AS A SALOON.

Ordinance—Refers to Single Saloon.

The expression "any place licensed as a saloon," used in section 1180 of the

Municipal Code of Chicago, relating to the revocation of licenses for the sale of liquor, refers to a single saloon, and does not include a building in which a person is licensed to operate more than one saloon. Malkan v. Chicago, 217 Ill. 481.

ANY PUBLIC HIGHWAY.

Farm Drainage Act—"Public Road"
Synonymous.

The expression "any public highway," used in section 40 of the Farm Drainage Act (J. & A. 4616), relating to the assessments of damage under the act, is synonymous with the expression "public road," also used in such section, and does not include the streets or alleys of a city or village. Drainage Commissioners v. Cerro Gordo, 217 Ill. 492.

ANY PUBLIC PARK.

Parks Act—Includes All Parks Controlled by Commissioners.

The expression "any public park," used in section 1 of the act of 1879 (J. & A. 8079), relating to drives to public parks, includes all public parks under the control of the commissioners. West Chicago, etc., Commissioners v. McMullen, 134 Ill. 179.

ANY PURCHASER.

Revenue Act—Includes Assignee of Tax Certificate.

The expression "any purchaser," used in section 215 of the Revenue Act (J. & A. 9434), relating to the release by the purchaser at a tax sale of rights under the purchase, refers to the owner of the certificate of sale, and since such certificate is made assignable by section 207 of the same act (J. & A. 9426), the expression also includes an assignee of such certificate. Ambler v. Glos, 237 Ill. 640.

ANY RAILROAD TRACK.

Cities and Villages Act—Railroad "Yard" Included.

Paragraph 89 of section 1 of article 5 of the Cities and Villages Act (J. & A.

1334), empowering cities to extend streets across "any railroad track" is broad enough, by the quoted expression, to include a railroad "yard," or collection of tracks. Illinois C. R. Co. v. Chicago, 141 Ill. 604.

ANY REPUTABLE DENTAL COLLEGE.

Dental Surgery Act of 1881.

A dental college whose examinations and requirements as to instruction may be unexceptionable may still lack some of the elements necessary to make it "reputable" within the meaning of section 5 of the act of 1881, requiring the State Board of Dental Examiners to issue a license, to practice dentistry without examination, to graduates of "any reputable dental college." Illinois State Board v. People, 123 Ill. 245. See also Dental Surgery Act of 1905 (J. & A. 7435), where the expression used is "a reputable dental college."

ANY RIGHTS OR LIABILITIES.

Limitations Act—"Any Causes of Actions" Distinguished.

Section 24 of the Limitations Act (J. & A. 7219), providing that the statute shall not apply to "any rights or liabilities, or any causes of action" accruing before the statute went into operation, does not use the expression "any rights or liabilities" as synonymous with "any causes of action," but intended to include under the two expressions quoted, all contracts executed prior to the time when the act became a law, whether any right of action had at that time accrued or not. Smart v. Morrison, 15 Ill. App. 230.

Note Not Due Included.

Section 24 of the Limitations Act (J. & A. 7219), providing that the act shall not affect "any rights or liabilities" accruing before the statute went into effect, includes, by the quoted expression, the right of holder and the liability of the maker on a note not due at such time, which are "rights and liabilities" within the meaning of the statute. Means v.

Harrison, 114 Ill. 251; Smart v. Morrison, 15 Ill. App. 230.

ANY SPECIAL OCCASION.

Criminal Code-Grand Jury.

Section 3 of division 11 of the Criminal Code (J. & A. 4102), providing that grand jurors dismissed before adjournment may be summoned again on "any special occasion" leaves to the discretion of the court the question whether a particular occasion is such as to warrant their recall. People v. McCauley, 256 Ill. 508.

ANY STREET.

Ordinance—Includes Alley.

An ordinance providing that no permit shall be issued for the use of space under "any street" or other public ground includes an alley. Burton v. Chicago, 236 III. 388.

ANY SUBSCRIBER.

Statute-Includes Assignee or Devisee.

Scates Comp. 535, relating to the liability of "any subscriber" to the capital stock of any plank road, etc., includes not only those who became stockholders by original subscription but also those holding stock by purchase, devise or by any other mode—in short, stockholders of every description. Gay v. Keys, 30 Ill. 421.

ANY SUIT OR PROCEEDING AT LAW.

Appellate Court Act—Claim Against Decedent's Estate Not Included.

The expression "any suit or proceeding at law," used in section 8 of the Appellate Court Act (J. & A. 2968), means a suit or proceeding carried on in substantial conformity with the forms and modes prescribed by the common law, and does not include proceedings for the presentation and allowance of claims against the estates of deceased persons. Grier v. Cable, 159 III. 36.

ANY SUIT OR PROCEEDING AT LAW OR IN CHANCERY.

Appellate Court Act-Practice Act.

The expression "any suit or proceeding at law or in chancery," used in section 91 of the Practice Act (J. & A. 8628), and in section 8 of the Appellate Court Act (J. & A. 2968), relating to appeals and writ of error, includes every claim or demand in a court of justice which was known at the adoption of the Constitution of 1870 as an action at law or a suit in chancery, and all actions since provided for in which personal or property rights are involved of the same nature as previously existing actions at law or in equity, but does not include special statutory proceedings involving rights and providing remedies which are not of a kind previously existing either at law or in equity. Christensen v. R. W. Bartelmann Company, 273 Ill. 348; Myers v. Newcomb, etc., District, 245 Ill. 145

ANY SUITS OR PROCEEDINGS.

Judgments, Decrees and Executions Act— Executions Included.

Section 66 of the Judgments, Decrees and Executions Act (J. & A. 6813), providing that the repeal of the act of 1845, therein provided, should not affect "any suits or proceedings" pending when the repeal went into effect, includes, by the quoted expressions, proceedings on an execution on an unsatisfied judgment. Dobbins v. First, etc., Bank, 112 Ill. 566.

ANY VOLUNTARY EXPOSURE TO UNNECESSARY DANGER.

Accident Insurance.

An insured who at the time of the accident is in the discharge of his regular duty as a yard-switchman or yard-brakeman handling broken cars is not killed as the result of "any voluntary exposure to unnecessary danger," within the meaning of an accident insurance policy. National, etc., Ass'n v. Jackson, 114 Ill. 539.

ANY WHARF OR PLACE OF STORAGE.

Criminal Code—Includes Buildings for Storage of Merchandise.

Section 124 of the Criminal Code (J. & A. 3720), relating to fraudulent warehouse receipts given for the delivery or deposit of commodities upon "any wharf or place of storage," includes by the quoted expression, all buildings, of every kind and character, in which goods, wares and merchandise are or may be stored, whether for hire or otherwise. McReynolds v. People, 230 Ill. 634.

ANY WOODEN OR FRAME BUILDING.

Ordinance-Instruction.

Where the ordinance prohibited the erection of "any wooden building" exceeding a certain size, and provides for tearing such buildings down, an instruction in an action of trespass for destroying a building under the ordinance that the city had no right to tear down the building in question unless it was a "wooden" building correctly states the requirements of the ordinance, the words "wooden" and "frame," as used in the ordinance being interchangeable. Ward v. Murphysboro, 77 Ill. App. 552.

ANYTHING REMAINING TO BE PERFORMED.

Administration Act.

The expression "anything remaining to be performed in the execution of the will," used in section 37 of the Administration Act (J. & A. 86), relating to the appointment of administrators de bonis non, means something to be performed as executor, and does and belongs to the office proper of executor, and does not extend to anything done by the executor as agent of trustee, such as a sale of real estate approved by the county court, although not made under the statute or by the order of the court. Nicoll v. Scott, 99 Ill. 537.

APARTMENT.

A part of a house occupied by a person, while the rest is occupied by another, or others. 7 Man. & G. 95; 6 Mod. 214; Woodfall, Landl. & Ten. 178. As to what is not an apartment, see 10 Pick. (Mass.) 293.

APEX JURIS.

(Lat. the summit of the law). A rule of law of extreme refinement. A term used to denote a stricter application of the rules of law than is indicated by the phrase summum jus. 2 Caines (N. Y.) 117; 2 Story (U. S.) 143; 5 Conn. 334; 2 Pars. Notes & Bills, c. 25, § 11. See, also, Co. Litt. 3046; Wingate, Max. 19.

APHASIA.

An impairment of the mind. Smith v. Henline, 174 Ill. 196.

APOCRISARIUS.

(Lat.) In civil law. A messenger; an ambassador.

Applied to legates or messengers, as they carried the messages of their principals. They performed several duties distinct in character, but generally pertaining to ecclesiastical affairs.

A messenger sent to transact ecclesiastical business, and report to his superior; an officer who had charge of the treasury of a monastic edifice; an officer who took charge of opening and closing the doors. Du Cange; Spelman; Calv. Lex.

Apocrisarius cancellarius, an officer who took charge of the royal seal, and signed royal despatches.

Called, also, secretarius consiliarius (from his giving advice); referendarius; a consiliis (from his acting as counsellor); a responsis, or responsalis.

APOGRAPHA.

In civil law. An examination and enumeration of things possessed; an inventory. Calv. Lex.

APOSTLES.

Brief letters of dismissal granted to a party who takes an appeal from the decision of an English court of admiralty, stating the case, and declaring that the record will be transmitted. 2 Brown, Civ. & Adm. Law, 438; Dig. 49. 6.

This term was used in the civil law. It is derived from apostolis, a Greek word, which signifies "one sent," because the judge from whose sentence an appeal was made sent to the superior judge these letters of dismission, or apostles. Merlin Repert. mot "Apotres;" 1 Pars. Mar. Law, 745; 1 Blatchf. (U. S.) 663.

APPARATOR.

(Law Lat.) One who furnishes or provides. A sheriff was formerly styled in England apparator comitatus, as having charge of certain county arrangements and expenditures. Cowell.

APPARENT DANGER.

Criminal Law-Self Defense.

That degree of peril of death or great bodily harm which will justify the killing of an assailant in self-defense. The danger need not be real, but must be sufficient to cause a reasonably prudent and courageous man to believe himself in in imminent peril.

In a prosecution for murder, where defendant defended on the ground of self defense, the expression "apparent danger," used in an instruction relating to such defense, does not imply more, but rather less, than such urgency of danger as to excite the fears of a reasonable person. Leigh v. People, 113 Ill. 379.

APPARENT (OR CONTINUOUS) EASEMENT.

One depending on some artificial structure or natural formation permanent in character and obvious. One which is at all times known to the owner of the subservient tenement by apparent signs. 18 N. J. Eq. 262; 1 Hurl. & N. 916.

APPARENT HEIR.

One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 Bl. Comm. 208.

In Scotch Law.

One who is entitled to enter heir to a deceased ancestor, before actual entry. Ersk. Inst. bk. 3, tit. 8, § 54.

APPARLEMENT.

In old English law. Resemblance; likelihood; as apparlement of war. St. 2 Rich. II. st. 1, c. 6; Cowell.

APPEAL.

(Fr. appeler, to call).

In Practice.

The removal of a cause from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and retrial. Ellsworth, C. J., 3 Dall. (U. S.) 321; 7 Cranch (U. S.) 110; 10 Pet. (U. S.) 205; 14 Mass. 414; 1 Serg. & R. (Pa.) 78; 1 Bin. (Pa.) 219; 3 Bin. (Pa.) 48.

Including Writ of Error.

It is sometimes used as meaning generally the removal of a cause to a higher court (4 N. J. Eq. 137), and in this sense it includes writ of error (1 Ill. 334).

Distinguished From Writ of Error.

It is a civil-law proceeding in its origin, and differs from a writ of error in this, that it subjects both the law and the facts to a review and a retrial, while a writ of error is a common-law process which removes matter of law orly for reexamination. 7 Cranch (U. S.) 111.

On an appeal, the whole case is examined and tried, as if it had not been tried before; while on a writ of error, the matters of law merely are examined, and judgment reversed if any errors have been committed. Dane, Abr. "Appeal." The word is used in the sense here given both in chancery and in common-law practice (16 Md. 282; 20 How. [U. S.] 198), and in criminal as well as in civil

law (9 Ind. 569; 6 Fla. 679); and in many states the writ of error has been abolished, and appeal established as the ordinary method of review in all cases, the scope of the review varying in the different states.

Administration Act—Certiorari Not Included.

The word "appeal," used in section 68 of the Administration Act (J. & A. 117), relating to appeals to the circuit court from orders of the county court regarding claims against estates, does not include a writ of certiorari. Schaeffer v. Burnett, 221 Ill. 318.

Chancery and Civil Law Remedy.

The term "appeal" was unknown to the common law, and belonged wholly to the civil law and courts of chancery, being the exclusive remedy for the review of chancery causes. Anderson v. Steger, 173 Ill. 116.

Modern Sense—Embracing All Proceedings for Review.

In modern times the technical definition of the word "appeal" is not always observed, and it is often used as embracing all kinds of proceedings for the review of the cases. Rockford v. Compton, 115 Ill. App. 411.

Technical Sense.

The term "appeal," in its original, technical and appropriate sense, meant the removal of a suit from an inferior court, after final judgment therein, to a superior court, and placing the case in the latter court to be again tried de novo upon its merits, just as though it had never been tried in the inferior court. Rockford v. Compton, 115 Ill. App. 411.

In Old Criminal Practice.

A formal accusation made by one private person against another of having committed some heinous crime. 4 Bl. Comm. 312.

In Legislation.

The act by which a member of a legislative body who questions the correctness of a decision of the presiding officer, or "chair," procures a vote of the body upon the decision.

APPEARANCE.

In practice. A coming into court as party to a suit, whether as plaintiff or defendant.

The formal proceeding by which a defendant submits himself to the jurisdiction of the court.

"'Appearance' in the law has several significations, and the word must always be understood in reference to the particular business or subject-matter to which it relates. In some cases it means to appear in person; in others, by attorney. Sometimes an obligation to appear can only be satisfied by actually coming into court, while in others it will be sufficient to put in special bail, or enter an appearance in the common rule book. In one case it may be necessary for the party to appear on the specified day, while in another it will be sufficient if done within ten or twenty days thereafter. The purpose or end to be answered by the appearance is also important. In most, if not all, cases where a party is bound to a personal appearance in court to answer any charge or action against him, he must not only appear, but must remain in court until discharged by due course of law, and how long he must attend depends on the nature of the proceedings and the course and practice of the court." 19 Wend. (N. Y.) 459.

Compulsory.

That which takes place in consequence of the service of process.

Voluntary.

That which is made in answer to a subpoena or summons, without process. 1 Barb. Ch. (N. Y.) 77.

General.

A simple and absolute submission to the jurisdiction of the court.

Special.

That which is made for certain purposes only, and does not extend to all the purposes of the suit.

Conditional.

One which is coupled with conditious as to its becoming general.

De Bene Esse.

One which is to remain an appearance, except in a certain event.

Gratis.

One made before the party has been legally notified to appear.

Optional.

One made where the party is not under any obligation to appear, but does so to save his rights. It occurs in chancery practice, especially in England.

Subsequent.

An appearance by the defendant after one has already been entered for him by the plaintiff. See Daniell, Ch. Pr.

APPEARANCE DAY.

The day on which an appearance is required.

Local Improvement Act.

The expression "appearance day," used in section 37 of the Local Improvement Act (J. & A. 1427), relating to the dismissal of petitions for confirmation of assessments, means the day provided for in the notices, under the statute, for a hearing on the confirmation. Decatur v. Barteau, 260 Ill. 615.

APPEAR IN OPEN COURT.

Chancery Act—Permits Appearance by Solicitor.

Section 19 of the Chancery Act (J. & A. 899), providing that final decrees entered against defendants not summoned or served with a copy of the bill may be set aside, on certain conditions, where such defendant, or his heirs or representatives, shall "appear in open court" within a certain time and petition, etc., does not require a personal appearance, but permits the statutory relief to be granted where the petition is filed through a duly authorized solicitor. Rissman v. Wierth, 244 Ill. 99.

APPEARS.

Common and Legal Meanings Compared.

The word "appears" is commonly used in two senses, in one sense, having the same meaning as manifest, obvious or proved, but in another sense it means only "seems," or "probably" true; in legal documents, such as decrees, orders of court, etc., and among lawyers, it is common to use the word as having the first of these meanings, such as in the phrase "it appears to the court," but to the layman the expression "it appears to me" ordinarily carries no other significance than "it seems to me," in the sense that it is probable or likely. Lecklieder v. Chicago Ry. Co., 172 Ill. App. 562.

APPELLANT.

In practice. He who makes an appeal from one jurisdiction to another.

APPELLATE.

In practice. Pertaining to appeals; having cognizance of appeals.

Implies Power to Review.

The word "appellate," as used in section 2 of article 6 of the Constitution of 1870, relating to the jurisdiction of the supreme court, means, as applied to jurisdiction, the power to revise the judgments of inferior courts. Canby v. Hartzell, 167 Ill. 631.

"Original" Distinguished.

The word "appellate," used in section 2 of article 6 of the Constitution of 1870, section 5 of article 5 of the Constitution of 1848, and section 2 of article 4 of the Constitution of 1818, relating to the jurisdiction of the supreme court, is used in contradiction to "original," and vests the supreme court with supervisory power only. People v. Board of Trade, 193 Ill. 584; Canby v. Hartzell, 167 Ill. 631; Crull v. Keener, 17 Ill. 247.

Constitution of 1818.

The word "appellate," used in section 2 of article 4 of the Constitution of 1818, relating to the jurisdiction of the su-

preme court, contemplated some action, decision or determination of some officer or inferior tribunal, by which the rights of some party could be affected, and to reverse which such party was allowed to appeal to the supreme court. Crull v. Keener, 17 Ill. 247.

APPELLATE JURISDICTION.

In practice. The jurisdiction which a superior court has to rehear causes which have been tried in inferior courts. See "Jurisdiction."

The attribute of a court created for reviewing the decisions of inferior courts. People v. Cook Circuit Court, 169 Ill. 205.

APPELLEE.

In practice. The party in a cause against whom an appeal has been taken.

At Common Law.

The party appealed to or accused by an approver. Gray v. People, 26 Ill. 347.

APPENDAGE.

Approaches to Bridge.

The approaches to a bridge are appendages of the bridge. Bloomington v. Illinois C. R. Co., 154 Ill. 544.

Grand Jury.

The grand jury is an appendage of the court. Ferriman v. People, 128 Ill. App. 233.

Lateral Road.

A lateral road is an appendage to the main road. Lake Shore, etc., R. Co. v. Baltimore, etc., R. Co., 149 Ill. 281; Newhall v. Galena, etc., R. Co., 14 Ill. 274.

Office of Clerk of Court.

The clerk's office is an indispensable appendage of the court. Knox County v. Arms, 22 Ill. 179.

APPENDANT.

(Lat. ad, to, pendere, to hang). Annexed or belonging to something supe-

rior; an incorporeal inheritance belonging to another inheritance.

Appendant in deeds includes nothing which is substantial corporeal property, capable of passing feoffment and livery of seisin. Co. Litt. 121; 4 Coke, 86; 8 Barn. & C. 150; 6 Bing. 150. A matter appendant must arise by prescription, while a matter appurtenant may be created at any time. 2 Viner, Abr. 594; 3 Kent, Comm. 404.

Lord Coke's Definition.

A thing corporeal cannot be appendent to a thing corporeal, nor a thing incorporeal to a thing incorporeal, but things incorporeal, which lie in grant, may be appendent to things corporeal. St. Louis, etc., Co. v. Curtis, 103 Ill. 418.

Power.

A power is appendant when the estate created by its exercise affects the estate and interest of the donee of the power. McFall v. Kirkpatrick, 236 Ill. 296.

APPENDANT OR APPURTENANT.

Power.

Powers are appendant or appurtenant when the donee has an estate in the land and the power is to take effect wholly or in part out of the estate. McFall v. Kirkpatrick, 236 Ill. 296.

Way.

Private ways are said to be appendant or appurtenant when they are incident to an estate, one terminus being on the land of the party claiming; they must inhere in the land, concern the premises and be essentially necessary to their enjoyment. Schmidt v. Brown, 226 Ill. 602; L. & N. R. Co. v. Koelle Co., 104 Ill. 462; Garrison v. Rudd, 19 Ill. 564.

APPLIANCES.

The thing applied or used; as, to use various appliances; a machine with its appliances. Consolidated, etc., Co. v. Savitz, 57 Ill. App. 665.

The word "appliance" is very broad and includes anything applied or used as

a means to an end. Cook v. Big Muddy, etc., Co., 249 Ill. 47.

Medicinal Appliance.

A multitude of appliances are now manufactured and sold under advertisements which represents that they will cure or relieve many human ills and diseases, such as liver pads, electric belts for rheumatism, electric batteries, plasters for corns and bunions and pains in the back, trusses for ruptures, abdominal supporters, braces for stooping shoulders, and ear drums and trumpets. People v. Lehr, 93 Ill. App. 508.

Mines.

The word "appliances," used in section 29 of article 4 of the Constitution of 1870, relating to legislation for the protection of miners, includes all physical conditions of the mine. Cook v. Big Muddy, etc., Co., 249 Ill. 47.

Transformer.

A transformer is a necessary appliance for the safe lighting of houses by electricity. Snell v. Clinton, etc., Co., 196 П1. 630.

APPLICANT FOR EMPLOYMENT.

Employment Act—Statutory Definition.

The expression "applicant for employment," as used in the act of 1903, relating to employment agencies, means any person seeking work of a lawful character. Act of 1903 and 1908 (J. & A. 5329); Mathews v. People, 202 Ill. 400.

APPLICANT FOR HELP.

Employment Act-Statutory Definition.

The expression "applicant for help," as used in the act of 1903 relating to employment agencies, means any person or persons seeking help in any legitimate enterprise. Act of 1903 and 1908 (J. & A. 5329); Mathews v. People, 202 Ill. 400.

APPLICATION.

(Lat. applicare). The act of making a request for something.

A written request.

In Insurance.

The preliminary statement made by a party applying for an insurance on life, or against fire.

Of Purchase Money.

The use or disposition made of the funds received by a trustee on a sale of real estate held under the trust.

Of Payment.

See "Appropriation."

APPOINTMENT.

The designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust.

As distinguished from an election, it seems that an appointment is generally made by one person, or a limited number acting with delegated powers, while an election is made by all of a class.

The word is sometimes used in a sense quite akin to this, and apparently derived from it as denoting the right or privilege conferred by an appointment. Thus, the act of authorizing a man to print the laws of the United States by authority, and the right thereby conveyed, are considered such an appointment, but the right is not an office. 17 Serg. & R. (Pa.) 29, 233. And see 3 Serg. & R. (Pa.) 157; Cooper, Just. 599, 604.

The exercise of a right to designate the person or persons who are to take the use of real estate. 2 Washb. Real Prop. 302.

APPOINTOR.

One authorized by the donor, under the statute of uses, to execute a power. 2 Bouv. Inst. note 1923. Also called "donee."

APPOINT OR ALLOW.

Guardians and Wards Act-Implies Discretion.

The expression "appoint or allow," The use or disposition made of a thing. | used in section 18 of the Guardian and Wards Act (J. & A. 6015), relating to persons acting as next friend for minors in prosecuting suits, implies that the court is clothed with a discretion in appointing or allowing one other than the guardian to institute or defend a suit on behalf of an infant. Patterson v. Pullman, 104 Ill. 87.

APPORT.

(Law Fr.) In old English law. Tax; tallage; tribute; imposition; payment; charge; expenses. Kelham.

APPORTIONMENT.

The division or distribution of a subject-matter in proportionate parts. Co. Litt. 147; 1 Swanst. 37, note; 1 Story, Eq. Jur. 475a.

Of Contracts.

The allowance, in case of the partial performance of a contract, of a proportionate part of what the party would have received as a recompense for the entire performance of the contract.

Of Incumbrances.

Determining the amounts which each of several parties interested in an estate shall pay towards the removal or in support of the burden of an incumbrance.

Of Rent.

The allotment of their shares in a rent to each of several parties owning it.

The determination of the amount of rent to be paid when the tenancy is terminated at some period other than one of the regular intervals for the payment of rent.

Of Corporate Shares.

The distribution pro rata among the shareholders when there has been an oversubscription.

Of an Annuity.

Pro rata allowance for part of a year; not allowed at common law, but allowed as to some classes by 11 Geo. II.

Of Representatives.

The fixing of the number of representatives in congress allowed to each state, made on the basis of population as shown by each United States census. Const. U. S. art. 1, § 2.

APPRAISAL.

Valuation-Incident to Contract.

"Appraisal" is the proper term to be used when an appraisement or valuation is to be made as auxiliary or incident to the contract. Sebree v. Board of Education, 254 Ill. 447.

APPRAISEMENT.

A just valuation of property.

A valuation under public authority as of the goods of a decedent, or of property taken for public use.

Appraisal for taxation is called "assessment" (q. v.)

"Arbitration" Distinguished.

There is a plain distinction between an appraisement and an arbitration, the object of the first being to preclude or prevent the arising of differences, and the latter presupposing a controversy or difference to be tried and decided. Sebree v. Board of Education, 254 Ill. 446.

When "Arbitration" Synonymous.

The terms "appraisement" and "arbitration" are sometimes used interchangeably, and frequently without any clear difference of meaning. Sebree v. Board of Education, 254 Ill. 446.

APPRECIATE.

To be fully aware of or alive to the value, importance or worth of it; see the full import of; to be fully conscious of; be aware of; detect; perceive the nature or effect of. Illinois, etc., v. Ryska, 200 Ill. 288.

To estimate justly or truly. Herd-man-Harrison, etc., Co. v. Spehr, 46 Ill. App. 32. To the same effect see Brace v. Black, 125 Ill. 39.

Applied to Something Likely to Be Overlooked.

The word "appreciate" is much used where something is in danger of being overlooked or undervalued. Herdman-Harrison, etc., Co. v. Spehr, 46 Ill. App. 32.

APPREHENSION.

The seizing, taking or arresting of a person on a criminal charge. Hogan v. Stophlet, 179 Ill. 154.

"Arrest" Distinguished.

The term "apprehension" is applied exclusively to criminal cases, and "arrest" to both civil and criminal cases. Hogan v. Stophlet, 179 Ill. 154; Montgomery County v. Robinson, 85 Ill. 176.

APPRENTICE.

A person bound in due form of law to a master to learn from him his art, trade, or business, and to serve him during the time of his apprenticeship. 1 Bl. Comm. 426; 2 Kent, Comm. 211; 3 Rawle (Pa.) 307; 61 N. Y. 274. A mere agreement by a father that his son should work for three years for wages to be paid the father, and should be taught the employer's trade, does not constitute the son an apprentice. 3 N. J. Law, 413. See 90 N. Y. 213.

APPRIZING.

In Scotch law. A form of process by which a creditor formerly took possession of the estates of the debtor in payment of the debt due.

It is now superseded by "ajudication."

APPROACH.

The right of visit or visitation to determine the national character of the ship approached for that purpose only. 1 Kent, Comm. 153.

To Bridge.

That prepared or made condition on foot passengers walking on such street each side of the bridge that makes a to cross the right of way. Bloomington

safe, easy and convenient way of getting across the bridge. O'Fallen v. Ohio & M. Ry. Co., 45 Ill. App. 577.

To Highway.

Whatever material construction at the sides thereof furnishes a passage or way by which to reach the highway itself; i. e., embankments, grades or structures on either side of a railroad, at the crossing. Chicago & A. R. Co. v. Joliet, 96 Ill. App. 469.

APPROACHES.

Ordinance—Includes Payment of Roadway.

An ordinance granting a location to a railroad company on condition that it erect and keep in repair a viaduct and its "approaches" includes, under the quoted word, the retaining walls, the filling with dirt and the pavement and roadway, suitable for the uses for which it was intended. McFarlane v. Chicago, 185 Ill. 248.

Railroads and Warehouses Act—Implies Structure.

The expression "approaches thereto," used in section 8 of the act of 1874 (J. & A. 8820), relating to the fencing and operation of railroads, means the embankments, bridges, grades, or structures of any sort, which serve as the passage or way for approaching the crossing. Bloomington v. Illinois C. R. Co., 154 Ill. 544; Illinois C. R. Co. v. Commissioners of Highways, 61 Ill. App. 208. To the same effect see Illinois C. R. Co. v. Bloomington, 49 Ill. App. 133.

Sidewalk Not Necessarily Included.

The expression "approaches thereto," used in section 8 of the act of 1874 (J. & A. 8820), relating to the fencing and operation of railroads, does not include in all cases all that part of the right of way covered by the street or highway and not immediately at the crossing and does not necessarily include a sidewalk constructed on a street for the use of foot passengers walking on such street to cross the right of way. Bloomington

v. Illinois C. R. Co., 154 Ill. 547. To the same effect see Chicago v. Pittsburg, Ft. W. & C. Ry. Co., 247 Ill. 323.

APPROACHES TO A BRIDGE.

The ways at the end of it, which are parts of the bridge itself or are appendages to it; the adjuncts, of whatever material constructed, at the ends of the bridge, which furnish a passage or way by which to approach the bridge itself. Bloomington v. Illinois C. R. Co., 154 Ill. 544.

APPROPRIATED.

Pre-emption Act—Implies Application to Use by Law.

The Pre-emption Act of 1830, providing that the right of pre-emption does not extend to lands, inter alia, "appropriated," for any other purpose, means, by the word "appropriated," an application of the lands to some specific use or purpose, by virtue of law, and not by any other power. McConnell v. Wilcox, 2 Ill. 360.

APPROPRIATION.

Of Payments.

The application of a payment made to a creditor by his debtor, to one or more of several debts. In the absence of an agreement, the application is presumed to be that most favorable to the debtor.

In Ecclesiastical Law.

The perpetual annexation of an ecclesiastical benefice which is the general property of the church to the use of some spiritual corporation, either sole or aggregate. It corresponds with "impropriation," which is setting apart a benefice to the use of a lay corporation. The name came from the custom of monks in England to retain the churches in their gift, and all the profits of them in propriousus to their own immediate benefit. 1 Burn, Ecc. Law, 71.

Of Government Money.

No money can be drawn from the the maker, for addition treasury of the United States but in con- 20 Wend. (N. Y.) 431.

sequence of appropriations made by law. Const. art. 1, § 9. Under this clause of the constitution it is necessary for congress to appropriate money for the support of the federal government, and in payment of claims against it, and this is done annually by acts of appropriation, some of which are for the general purposes of government, and others special and private in their nature.

The word "appropriation," used in paragraph 7 of section 9 of article 1 of the Constitution of the United States, relating to drawing money from the public treasury, is used to express the disposition of public moneys from the treasury by law. McConnell v. Wilcox, 2 Ill. 359.

Implies Application to Particular Use.

The term "appropriation" implies a setting apart or application to some particular use. McConnell v. Wilcox, 2 Ill. 359.

Legal Sense — Applicable to Future Revenue.

An "appropriation," in a legal sense, may be made of revenue not then in the treasury, and to accrue in the future, as well as of money on hand. People v. Chicago & N. W. Ry. Co., 249 Ill. 174.

APPROVE.

To increase the profits upon a thing. Used of common or waste lands which were inclosed and devoted to husbandry. 3 Kent, Comm. 406; Old Nat. Brev. 79.

While confessing crime one's self, to accuse another of the same crime. It is so called because the accuser must prove what he asserts. Staundf. P. C. 142; Cromp. Jus. Peace, 250.

To vouch; to appropriate; to improve. Kelham.

APPROVED ENDORSED NOTES.

Notes endorsed by another person than the maker, for additional security. See 20 Wend. (N. Y.) 431.



APPROVEMENT.

At Common Law.

By the common law, approvement is said to be a species of confession, and incident to the arraignment of a prisoner indicted for treason or felony, who confesses the fact before plea pleaded, and appeals or accuses others, his accomplices, in the same crime, in order to obtain his own pardon. Gray v. People, 26 Ill. 347.

APPROVER.

At Common Law.

In English criminal law. One confessing himself guilty of felony, and accusing others of the same crime to save himself. Cromp. Inst. 250; 3 Inst. 129. Such an one was obliged to maintain the truth of his charge, by the old law. Cowell. The approvement must have taken place before plea pleaded. 4 Bl. Comm. 330.

Certain men sent into the several counties to increase the farms (rents) of hundreds and wapentakes, which formerly were let at a certain value to the sheriffs. Cowell.

Sheriffs are called the "king's approvers." Termes de la Ley.

Approvers in the Marches were those who had license to sell and purchase beasts there.

One charged with a felony who confesses the fact before plea pleaded, and appeals, or accuses others as his accomplices in the same crime in order to obtain his own pardon. Stevens v. People, 215 Ill. 600. To the same effect see Gray v. People, 26 Ill. 347; Myers v. People, 26 Ill. 176.

APPROXIMATE.

To carry or advance near; to cause to approach; to draw near; to approach. Bloomington, etc., Co. v. Union, etc., Co., 94 Ill. App. 66.

APPROXIMATELY.

With approximation; so as to approximate; nearly. Bloomington, etc., Co. v. Union, etc., Co., 94 Ill. App. 66.

APPROXIMATELY AS FOLLOWS.

Contract—Implies Limit.

A contract for cans "approximately as follows:" giving the number of each class of cans to be furnished, is intended, by the quoted expression, to fix a limit beyond which the seller could not be required to go, or in other words that the number of cans the contract required the seller to furnish would approach the figures named, nearly—it might not be quite so many—but not beyond, or over, the seller being bound, if demanded, to furnish the quantities named in the contract, but no more. Bloomington, etc., Co. v. Union, etc., Co., 94 Ill. App. 66.

APPURTENANCE.

A thing used with, and related or depended upon, another thing more worthy, and agreeing in its nature and quality with the thing whereunto it is appended or appurtenant. Jarvis v. Seele, etc., Co., 173 Ill. 195.

Appurtenance must be of an inferior nature to the principal (16 Conn. 260), and must not only be appendent in utility, but there must be unity of right to both in the same person (29 Ohio St. 649).

Legal Meaning.

Something belonging to another thing as principal, and which passes as incident to the principal thing. Scheidt v. Belz, 4 Ill. App. 437.

Use of Pond for Boating.

The use of a mill pond for boating purposes is an appurtenance to land granted to a railroad company to be used as a picnic ground by excursionists to be brought there by the railroad, so far as was necessary for the proper enjoyment of the land granted. Shelby v. Chicago & E. I. R. Co., 143 Ill. 401.

APPURTENANCES.

Things belonging to another thing as principal, and which pass as incidents to such principal thing. 10 Pet. (U. S.) 25; 1 Serg. & R. (Pa.) 169; 117 Mo. 61; 61 N. Y. 390; 53 N. H. 508.

Appurtenances are distinguished from appendages in that the latter are those appendant things which become so by prescription, while the latter are those otherwise acquired. 1 Johns. Cas. (N. Y.) 291; 11 Johns. (N. Y.) 498.

Deed-What Passes.

Nothing passes by the word "appurtenances" in a deed except such incorporeal easement or rights or privileges as are strictly necessary and essential to the proper enjoyment of the estate granted. Henry v. Breyer, 151 Ill. App. 569.

APPURTENANCES OF A PERMANENT CHARACTER.

Lease-Bar Fixtures Not Included.

Items furnished by a lessee, such as bar fixtures, railings, filter, tank, piping, refrigerators, range, shelving, brackets, bar fittings and curtains are not "appurtenances of a permanent character" attached to the building within the meaning of a lease. Merle v. Beifeld, 194 Ill. App. 380.

APPURTENANT.

Easement—Highway—Drain.

Easements, such as highways and drains, in order to be appurtenant to land, must be connected with the land to which the appurtenances appertain. Vickers, J., dissenting opinion. Funston v. Huffman, 232 Ill. 372.

Land.

One piece of land held in fee or lesser title cannot be appurtenant to another piece of land. St. Louis, etc., Co. v. Curtis, 103 Ill. 418.

ARBITER.

A person bound to decide according to the rules of law and equity, as distinguished from an arbitrator, who may proceed wholly at his own discretion, so that it be according to the judgment of a sound man. Cowell. This distinction between arbiters and arbitrators is not observed in modern law. Russ. Arb. 112. See "Arbitrator."

One appointed by the practor to decide by the equity of the case, as distinguished from the judex, who followed the law. Calv. Lex.

One chosen by the parties to decide the dispute; an arbitrator. Bell, Dict.

ARBITRAMENT AND AWARD.

A plea to an action brought for the same cause which had been submitted to arbitration, and on which an award had been made. Watson, Arb. 256.

ARBITRARY PUNISHMENT.

In practice. That punishment which is left to the decision of the judge, in distinction from those defined by statute.

ARBITRATION.

(Lat. arbitratio). In practice. The investigation and determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties, and called "arbitrators," or "referees." Worcester; 3 Bl. Comm. 16; 17 How. (U. S.) 344.

It is either:

- (1) Compulsory arbitration, being that which takes place when the consent of one of the parties is enforced by statutory provisions; or
- (2) Voluntary arbitration, being that which takes place by mutual and free consent of the parties. It usually takes place in pursuance of an agreement (commonly in writing) between the parties, termed a "submission," and the determination of the arbitrators or referee is called an "award."
 - At common law it was also either
- (3) In pais, that is, by simple agreement of the parties; or
- (4) By rule of court, that is by the intervention of a court of law or equity. 3 Bl. Comm. 16.

Presupposes Controversy.

The word "arbitration" presupposes a controversy or difference to be tried and

settled. Sebree v. Board of Education, 254 Ill. 446.

ARBITRATOR.

In practice. A private extraordinary judge, to whose decision matters in controversy are referred by consent of the parties. Worcester.

"Referee" is of frequent modern use as a synonym of "arbitrator," but is in its origin of broader signification, and less accurate than arbitrator.

ARBITRATORS.

Judges chosen by the parties to decide the matters submitted to them finally and without appeal. White Star, etc., Co. v. Hultberg, 220 Ill. 602.

ARCHITECT.

One who makes it his occupation to form or devise plans and designs and to draw up specifications for buildings or structures and to superintend their construction. People v. Lower, 251 Ill. 530.

Architects Act—Statutory Definition.

The word "architect," as used in the Architects Act, means any person who shall be engaged in the planning or supervision of the erection, enlargement, or alteration of buildings for others, and to be construed by others than himself. Architects Act 9 (J. & A. 483); People v. Lower, 251 Ill. 530.

One Planning His Own Building.

One erecting a building who makes his own plans and specifications does not thereby become an "architect," as defined by section 9 of the Architects Act (J. & A. 483); People v. Lower, 251 Ill. 530.

ARCHIVES.

(Lat. archivum, arcibum). The rolls; any place where ancient records, charters, and evidences are kept. In libraries, the private depositary. Cowell; Spelman. The records need not be ancient to constitute the place of keeping them the "archives."

AREA.

An inclosed yard or opening in a house; an open place adjoining to a house. 1 Chit. Prac. 176.

ARMISTICE.

A cessation of hostilities between belligerent nations for a considerable time.

It is either partial and local, or general. It differs from a mere suspension of arms, which takes place to enable the two armies to bury their dead, their chiefs to hold conferences or pourparlers, and the like. Vattel, Droit des Gens, lib. 3, c. 16, § 233. The terms "truce" and "armistice" are sometimes used in the same sense.

ARMS.

Anything that a man wears for his defense, or takes in his hands, or uses in his anger, to cast at or strike at another. Co. Litt. 161b, 162a; Cromp. Jus. Peace, 65; Cunningham. Every description of weapon, offensive and defensive. 4 Ark. 21.

The constitution of the United States (Amend. art. 2) declares that, "a well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." This has been held to mean only such arms as are adapted to military purposes. 3 Heisk. (Tenn.) 179; 35 Tex. 476.

Signs of arms, or drawings, painted on shields, banners, and the like. The arms of the United States are described in the resolution of congress of June 20, 1782.

ARMY.

The military forces of a nation intended for service on land. It does not include the marine corps. 2 Sawy. (U. S.) 200; 21 N. Y. Supp. 104. Contra, 7 Rob. (N. Y.) 635.

As used in the United States constitution and laws it does not include the state militia. 16 Grat. (Va.) 475.

ARRAIGN.

To call a prisoner to the bar of the court to answer the matter charged in the indictment. 2 Hale, P. C. 216. To set in order. An assize may be arraigned. Litt. § 242; 3 Mod. 273; Termes de la Ley; Cowell.

Blackstone's Definition.

To call the prisoner to the bar of the court to answer the matter charged upon him in the indictment. Fitzpatrick v. People, 98 Ill. 260.

ARRAIGNMENT.

In criminal practice. Calling the defendant to the bar of the court, to answer the accusation contained in the indictment.

The first step in the proceeding consists in calling the defendant to the bar by his name, and commanding him to hold up his hand. This is done for the purpose of completely identifying the prisoner as the person named in the indictment. The holding up his hand is not, however, indispensable, for, if the prisoner should refuse to do so, he may be identified by any admission that he is the person intended. 1 W. Bl. 33. See Archb. Crim. Pl. (1859 Ed.) 128.

The second step is the reading the indictment to the accused person. This is done to enable him fully to understand the charge to be produced against him. The mode in which it is read is, after saying, "A. B. hold up your hand," to proceed, "You stand indicted by the name of A. B., late of, etc., for that you, on," etc., and then go through the whole of the indictment.

The third step is to ask the prisoner: "How say you [A. B.], are you guilty, or not guilty?" Upon this, if the prisoner confesses the charge, and it appears to the satisfaction of the judge that he rightly comprehends the effect of his plea, the confession is recorded, and nothing further is done till judgment. If, on the contrary, he answers, "Not guilty," that plea is entered for him, and the clerk or attorney general replies that he is guilty; when an issue is formed. 1 Mass. 95.

If the defendant, when called upon, makes no answer, and it is a matter of doubt whether or not he is mute of malice, the court may direct a jury to be forthwith impaneled and sworn, to try whether the prisoner is mute of malice or ex visitatione Dei; and such jury may consist of any twelve men who may happen to be present. If a person is found to be mute ex visitatione Dei, the court, in its discretion, will use such means as may be sufficient to enable the defendant to understand the charge and make his answer; and if this is found impracticable, a plea of not guilty will be entered, and the trial proceed. But if the jury return a verdict that he is mute fraudulently and willfully, the court will pass sentence as upon a conviction. Mass. 103; 13 Mass. 299; 9 Mass. 402; 10 Metc. (Mass.) 222: Archb. Crim. Pl. (4th London Ed.) 215. See the case of 57; 3 Car. & K. 121; Roscoe, Crim. Ev. (4th London Ed.) 215. See the case of a deaf person who coud not be induced to plead (1 Leach, C. C. [4th Ed.] 451); of a person deaf and dumb (1 Leach, C. C. [4th Ed.] 102; 14 Mass. 207; 7 Car. & P. 303; 6 Cox, C. C. 386; 3 Car. & K. 328). See "Peine et Forte Dure."

ARRAS.

In Spanish law. The donation which the husband makes to his wife, by reason or on account of marriage, and in consideration of the dote, or portion, which he receives, from her. Aso & M. Inst. bk. 1, tit. 7, c. 3.

The property contributed by the husband ad sustinenda onera matrimonii (for bearing the expenses).

The husband is under no obligation to give arras, but it is a donation purely voluntary. He is not permitted to give in arras more than a tenth of his property. The arras is the exclusive property of the wife, subject to the husband's usufruct during his life. Burge, Confl. Laws, 417.

ARRAY.

In practice. The whole body of jurors summoned to attend a court, as they are

arrayed or arranged on the panel. See "Challenge;" Dane, Abr. Index; 1 Chit. Crim. Law, 536; Comyn, Dig. "Challenge" (B).

ARREARS.

(Fr.) The remainder of an account or sum of money in the hands of an accountant. Any money due and unpaid at a given time. Cowell; Spelman.

ARREST.

(Fr. arreter, to stay, to stop, to detain). To deprive a person of his liberty by legal authority. The seizing a person and detaining him in the custody of the law.

The apprehension or detaining of the person in order to be forthcoming to answer to an alleged or suspected crime. Hogan v. Stophlet, 179 Ill. 154; Montgomery County v. Robinson, 85 Ill. 176.

To take, seize or apprehend a person by virtue of legal process issued for that purpose. Montgomery County v. Robinson, 85 Ill. 176.

As ordinarily used, the terms "arrest" and "attachment" coincide in meaning to some extent; though in strictness, as a distinction, an arrest may be said to be the act resulting from the service of an attachment. And in the more extended sense which is sometimes given to attachment, including the act of taking, it would seem to differ from arrest in that it is more peculiarly applicable to a taking of property, while arrest is more commonly used in speaking of persons. The terms are, however, often interchanged when speaking of the taking a man by virtue of legal authority. Arrest is also applied in some instances to a seizure and detention of personal chattels, especially of ships and vessels, but this use of the term is not common in modern law.

In Civil Practice.

The apprehension of a person by virtue of a lawful authority to answer the demand against him in a civil action.

The term "arrest" is more properly applicable to civil cases. Hogan v. Stophlet, 179 Ill. 154; Montgomery County v. Robinson, 85 Ill. 176.

Arising Out of and In Course of Employment.

Whether a risk arises out of and in the course of the employment within the Workmen's Compensation Act depends on whether the risk is one peculiar to that particular employment, and the question whether the risks or dangers of any particular employment are greater or less than risks of other employments need not be decided. Ohio Bldg. Safety Vault Co. v. Industrial Board of Illinois, 277 Ill. 96.

An injury arises "out" of the employment within the meaning of the Workmen's Compensation Act, when the accident results from a risk reasonably incident to the employment. Eugene Dietzen Co. v. Industrial Board of Illinois, 279 Ill. 11.

The words "arising out of" and "in course of employment" in section of Workmen's Compensation Act are used conjunctively, and in order to satisfy the statute both conditions must concur. Mueller Constr. Co. v. Industrial Board of Illinois, 283 Ill. 148.

In determining whether injury from automobile while crossing street was one arising out of and in course of employment, within the Workmen's Compensation Act, the test is not whether other persons are exposed to danger but whether the particular employment rendered the workmen peculiarly subject to danger. Mueller Constr. Co. v. Industrial Board of Illinois, 283 Ill. 148.

In Criminal Practice.

The apprehending of a person to answer for an alleged or suspected crime. The word "arrest" is said to be more properly used in civil cases, and "apprehension" in criminal.

In Admiralty Practice.

The seizure of a vessel on process in au action in rem.

ARREST OF INQUEST.

Pleading in arrest of taking the inquest on a former issue, and showing cause why an inquest should not be taken. Wharton.

ARRESTEE.

In Scotch law. He in whose hands a debt, or property in his possession, has been arrested by a regular arrestment.

If, in contempt of the arrestment, he make payment of the sum or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrestor. Ersk. Inst. 3. 6. 6.

ARRESTER.

In Scotch law. One who sues out and obtains an arrestment of his debtor's goods or movable obligations. Ersk. Inst. 3. 6. 1.

ARRESTMENT.

In Scotch law. Securing a criminal's person till trial, or that of a debtor till he gives security judicio sisti. The order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. Ersk. Inst. 3. 6. 1; Id. 1. 2. 12.

Where arrestment proceeds on a depending action, it may be loosed by the common debtor's giving security to the arrester for his debt, in the event it shall be found due. Ersk. Inst. 3. 6. 7.

ARRET.

(Fr.) A judgment, sentence, or decree of a court of competent jurisdiction.

The term is derived from the French law, and is used in Canada and Louisiana.

Saisie arret is an attachment of property in the hands of a third person. Code Prac. La. art. 209; 2 Low. (U. S.) 77; 5 Low. (U. S.) 198, 218.

ARRETTED.

(Arrectatus, i. e., ad rectum vocatus). Convened before a judge and charged with a crime.

Ad rectum malefactorem is, according to Bracton, to have a maefactor forthcoming to be put on his trial. Imputed, or laid to one's charge; as, no folly may be arretted to any one under age. Bracton, lib. 3, tr. 2, c. 10; Cunningham.

ARRIVE.

To come to a particular place; to reach a particular or certain place. See 1 Brock. (U. S.) 411; 2 Cush. (Mass.) 439; 8 Barn. & C. 119.

ARROGATION.

The adoption of a person sui juris. 1 Brown, Civ. Law, 119; Dig. 1. 7. 5; Inst. 1. 11. 3.

ARRONDISSEMENT.

One of the subdivisions of a department (q. v.) in France.

ARSON.

(Lat. ardere, to burn). At common law. The malicious burning of the house of another. Coke, 3d Inst. 66; Bish. Crim. Law, § 415; 4 Bl. Comm. 220; 2 Pick. (Mass.) 320; 10 Cush. (Mass.) 479; 7 Grat. (Va.) 619; 9 Ala. 175; 7 Blackf. (Ind.) 168; 1 Leach, C. C. (4th Ed.) 218; Mai v. People, 224 Ill. 417. By statute in most, if not all, the states, the house need not be that of another.

The house, or some part of it, however small, must be consumed by fire. 9 Car. & P. 45; 16 Mass. 105; 110 Mass. 403; 5 Ired. (N. C.) 350; 25 Ired. (N. C.) 570; 62 N. Y. 117.

At common law, the building must have been a dwelling house, but this included all buildings within the curtilage. By statute the offense has been extended to other buildings.

Burning Hay Stack.

Burning a hay stack is not arson, either at common law or under statute. Creed v. People, 81 Ill. 571.

Criminal Code—Statutory Definition.

Every person who shall wilfully and maliciously burn or cause to be burned

any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, malthouse, stilling house, factory, mill, pottery or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail or any other public building, or any boat or other water craft, or any bridge of the value of \$50 erected across any of the waters of this state, is guilty of arson within the meaning of the Criminal Code. Criminal Code Division 113 (J. & A. 3495).

Statutory and Common Law Definition Compared.

The only difference between the definition of "arson," as given in section 13 of the Criminal Code (J. & A. 3495), and as given by the common law, is that the statute extends the offense to certain structures which at common law were not included by the terms "building" or "house." Mai v. People, 224 Ill. 417.

ART.

A principle put in practice, and applied to some art, machine, manufacture, or composition of matter. 4 Mason (U. S.)

1. See Act Cong. July 4, 1836, § 6.

Copper-plate printing on the back of a banknote is an art for which a patent may be granted. 4 Wash. C. C. (U. S.) 9.

ARTERIO SCLEROSIS.

The hardening of the arteries. Drum v. Capps. 240 Ill. 549.

Characteristics—"Atheromatous Arteries" Synonymous.

The disease known as "arterio sclerosis," or "atheromatous arteries," as it is also called, is a common disease of old age, which may or may not produce a softening of the brain or premature senility, the effect of the disease on cerebral activity being to diminish the arterial caliber and to lessen nutrition. Drum v. Capps, 240 Ill. 549.

ARTHEL (PROPERLY ARDDELW OR ARDDEL).

In Welsh and old English law. To avouch. Cowell.

Used, also, as a substantive. Thus, in the laws of Hoel Dha it was provided that if a man were taken with stolen goods, he must be allowed a lawful arddelw (vouchee) to clear him of his felony. This was abolished by St. 26 Hen. VIII. c. 6. Blount.

ARTICLES, LORDS OF.

A committee of the Scotch parliament, which, in the mode of its election, and by the nature of its powers, was calculated to increase the influence of the crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of parliament, and at the revolution the convention of estates declared it a grievance, and accordingly it was suppressed by Act 1690, c. 3. Wharton,

ARTICLES OF IMPEACHMENT.

A written allegation of the causes for impeachment.

They are called by Blackstone a kind of bill of indictment, and perform the same office which an indictment does in a common criminal case. They do not usually pursue the strict form and accuracy of an indictment, but are sometimes quite general in the form of the allegations. Wooddeson, Lect. 605; Comyn, Dig. "Parliament" (L 21); Story, Const. § 806.

ARTICLES OF INCORPORATION.

Corporations Act—What Expression Includes.

The expression "articles of incorporation," used in section 18 of the Corporations Act (J. & A. 2435), relating to the liability of officers and directors for assuming corporate functions before compliance with the statute, includes the statement, the license, the report of the commissioners, the certificate of organization, and a list of the subscribers. Loverin v. McLaughlin, 161 Ill. 423; People v. Chicago, etc., Co., 130 Ill. 286.

ARTICLES OF RELIGION.

The "Thirty-Nine Articles" of religious dogma drawn up in the reign of James I., and approved by him.

ARTICLES OF STATIONERY.

Statute—Blanks for Court Clerks Included.

Blanks for the use of court clerks are within the meaning of Scates' Comp. Ch. 41 Sec. 32 providing for the furnishing to court clerks of "articles of stationery necessary for their respective courts." Knox County v. Arms, 22 Ill. 179.

ARTICLES OF THE NAVY.

A system of rules for the government of the navy.

ARTICLES OF THE PEACE.

A complaint made before a court of competent jurisdiction by one who has just cause to fear that an injury to his person or property is about to be committed or caused by the party complained of, alleging the causes of his belief, and asking the protection of the court.

The object of articles is to compel the party complained of to find sureties of the peace.

ARTICLES OF UNION.

Articles, twenty-five in number, adopted by the parliaments of England and Scotland in 1707, and taking effect May 1st of that year, for the union of the two countries. 1 Bl. Comm. 96.

ARTICLES OF WAR.

The code of laws established for the government of the army.

The term is used in this sense both in England and the United States. The term also includes the code established for the government of the navy. See Acts April 23, 1800, and April 10, 1806, and 22 Geo. II. c. 33; 19 Geo. III. c. 17; 37 Geo. III. cc. 70, 71; 47 Geo. III. c. 71. See "Martial Law."

ARTICLES USED IN PACKING.

Fire Insurance—Coal Used in Packing Establishment Included.

The expression "articles used in packing," used in a policy of fire insurance obtained by a meat packing establishment on articles used by them in their business, includes a quantity of coal in the yard which was shown to be necessary for the prosecution of the business, the amount on hand being shown to be reasonable in view of the business done. Phoenix, etc., Co. v. Favorite, 49 Ill. 261.

ARTIFICER.

One by whom something is made. 4 Strobh. (S. C.) 365.

A skilled workman. 13 Q. B. Div. 832.

ARTIFICIAL PRESUMPTIONS.

In the law of evidence. Presumptions (otherwise termed "legal") which derive from the law a technical or artificial operation and effect beyond their mere natural tendency to produce belief. 3 Starkie, Ev. 1235.

AS.

(Lat.) A pound. It was composed of twelve ounces. The parts were reckoned, as may be seen in the law, servum de haeredibus (Inst. lib. 13, Pandect) as follows: Uncia, 1 ounce; sextans, 2 ounces; triens, 3 ounces; quatriens, 4 ounces; quincunx, 5 ounces; semis, 6 ounces; septunx, 7 ounces; bes, 8 ounces; dodrans, 9 ounces; dextans, 10 ounces; deunx, 11 ounces.

The whole of a thing, solidum quid. Thus, as signified the whole of an inheritance, so that an heir ex asse was an heir of the whole inheritance. An heir ex triente, ex semisse, ex besse, or ex deunce was an heir of one-third, one-half, two-thirds, or eleven-twelfths.

Pleading—Equivalent to "Inasmuch As" or "Because."

A declaration that plaintiff "as" father and next of kin of a deceased suffered damage, etc., is equivalent to an allegation that "inasmuch as," or "because" plaintiff is father, etc., a right of action has accrued to him under the statute, such being the meaning of the word "as" in that connection. Chicago C. Ry. Co. v. Hackendahl, 88 Ill. App. 39.

When Construed "That" or "Which."

When the context requires it, the word "as" may be given the meaning of "that" or "which." Beasley v. People, 89 Ill. 577.

AS ALLEGED IN THE PLAIN-TIFF'S DECLARATION.

Instruction.

An instruction in an action for personal injuries that if defendant failed to use such care and diligence as previously described and by reason thereof plaintiff was injured "as alleged in the plaintiff's declaration," refers, by quoted expression, to the use of diligence by defendant as well as to plaintiff's injury. Union, etc., Co. v. Lowenrosen, 222 Ill. 508.

AS BY LAW PROVIDED.

Trade Mark Act.

An indictment charging defendant with a violation of the Trade Mark Act (J. & A. 11391 et seq.), and alleging that the labels alleged to have been counterfeited had been duly filed for record "as by law provided," means, by the quoted expression, that the copies counterparts or fac similes were left with the secretary and that they were accompanied by the necessary sworn statement, as required by section 3 of the act (J. & A. 11393) and that such sworn statement was filed for record by the secretary. Vincendeau v. People, 219 III. 482.

AS EXPLAINED IN THESE INSTRUCTIONS.

Instruction—Does Not Take Question of Negligence from Jury.

An instruction in an action for negligence conditioning the verdict upon the plaintiff's exercise of reasonable care and diligence for his own safety "as explained in these instructions" not to be construed as taking away from the jury the question of negligence, but refers to an explanation of what constitutes ordinary care as a matter of law, which the court had a right to make, and is not a decision by the court on a question of fact. Christy v. Elliott, 216 Ill. 47.

AS HERETOFORE ENJOYED.

Constitution of 1870—Refers to Common Law Jury Trials.

The expression "as heretofore enjoyed," used in secction 5 of article 2 of the Constitution of 1870, relating to jury trials, refers to the right of jury trial as it existed at the time of the adoption of the Constitution, and the word "heretofore," in such connection, referring to the past, the reference is to jury trials as at common law. Brewster v. People, 183 Ill. 149; George v. People, 167 Ill. 456; Commercial, etc., Co. v. Scammon, 123 Ill. 605.

AS NEAR AS MAY BE.

Statute-Contemplates Variation.

A statute providing that procedure in a named case shall conform "as near as may be" to those in another named case does not mean "as near as may be possible," or "as near as may be practicable," or require a strict compliance with the requirements of the latter named act, but is merely directory and advisory, and to be construed as contemplating some variation from the prescribed course, leaving it to the discretion of the court to reject such of the provisions of the act referred to as are not strictly applicable to the character of the proceedings involved. Rock Island, etc., Bank v. Thompson, 173 Ill. 600; Bishop v. Welch, 149 Ill. App. 498.

AS NOW ORGANIZED.

Lease—Refers to Purpose of Organization.

Where land was leased to an unincorporated club and conditioned to be deter-

mined when the club should cease to exist "as now organized," the quoted expression refers to the purpose and not to the manner of the organization, so that the lease is not determined by the incorporation of the club. Alexander v. Tolleston Club, 110 Ill. 74.

AS NOW PROVIDED BY LAW.

Schools Act—Does Not Refer to Cities and Villages Act.

Section 2 of the act of 1893, extending the powers of school inspectors, repealed by section 6 of the act of 1907 (J. & A. 10347), providing that all money necessary for the purposes of the act shall be raised "as now provided by law," refers, as applied to school districts in the city of Joliet, to chapter 11 of the act of 1857 incorporating that city, which act provides the manner in which such taxation is to be levied, and which is not repealed by the Cities and Villages Act (J. & A. 1271 et seq.), or by the general Schools Act (J. & A. 10022 et seq.). People v. Mottinger, 215 Ill. 261.

AS OF ANY TERM.

Warrant of Attorney—Confession in Vacation Not Included.

A warrant of attorney authorizing the confession of judgment "as of any term" clearly manifests an intention that the judgment should be confessed at some term of a court of record and does not authorize a confession in vacation. Whitney v. Bohlen, 157 Ill. 576. To the same effect see Graves v. Whitney, 49 Ill. App. 437.

AS OUGHT TO BE ALLOWED.

Paupers Act—Does Not Make Board of Supervisors a Court.

Section 4 of the Paupers' Act of 1845, empowering the county commissioners court to allow such part of bills for the care of poor persons or nonresidents not technically paupers "as ought to be allowed" does not make the board of supervisors a court trying a cause, whose judgment is binding, but merely a board of

auditors, whose finding may be reviewed in an action brought to recover for such bills. La Salle County v. Reynolds, 49 Ill. 190.

AS PER CONDITIONS.

Shipping Order—Does not Operate as Estoppel.

Where a shipper ships goods on an order blank printed by itself which provides that the goods shall be shipped "as per conditions" of the carrier's bill of lading, which shipping order was written by officers of the shipper who were not familiar with the bill of lading referred to, the use of the expression quoted does not stop the shipper from denying that it assented to the conditions of the bill of lading, but raises a natural inference that it knew of such conditions and intended that the shipment should be made on those conditions, and that it thereby assented thereto, which the carrier is entitled to have considered by the jury. Illinois, etc., Co. v. Chicago R. I. & P. Ry. Co., 250 Ill. 402.

AS PER CONTRACT.

Claim against Intestate Estate—Does not Imply Express Contract.

A claim against an intestate estate for a sum of money "as per contract" with decedent is sufficient allegation of a contract to enable claimant to recover under an implied contract for services, care, goods and the like, shown not to be gifts, and does not require claimant to prove a special contract to pay for same. Harrison v. Lindley, 104 Ill. 247.

AS THEIR INTEREST MAY APPEAR.

Fire Insurance—Refers to Interest Existing at Time of Contract.

The expression "as their interest may appear," used in a fire insurance policy relating to the interest of a mortgagee, has relation to and contemplates an insurable interest in the mortgagee which exists at the time the contract was made, and has no application to any new interest

not then in existence, such as a simple contract indebtedness incurred by the mortgager to the mortgagee and not secured by the mortgage. Ware v. Barnard, 94 Ill. App. 499.

AS SHOWN BY THE EVIDENCE.

Instruction—Assumes Facts as Proved.

The expression "as shown by the evidence," used in an instruction, is erroneous as assuming and telling the jury that the facts in reference to which the expression was used have been proven. Chicago B. & Q. Ry. Co. v. Sack, 136 Ill. App. 431.

AS SOON AFTER AS POSSIBLE.

Fire Insurance—Within Five Days Compliance.

A policy of fire insurance providing that proof of loss shall be furnished "as soon as possible" is complied with by furnishing proofs within five days of such loss. Peoria, etc., Co. v. Lewis, 18 Ill. 561.

AS SOON AS CONVENIENTLY MAY BE.

Assignment for Benefit of Creditors.

An assignment for the benefit of creditors requiring the assignee to sell the assigned property "as soon as conveniently may be" requires him to sell at a suitable time, for a proper price, and after giving a fit opportunity for competition, all adapted to the interest of the parties, the nature of the property, and to effectuate the object of the trust, and does not permit it to be made at the mere convenience of the assignee. Finlay v. Dickerson, 29 Ill. 20.

AS SOON AS POSSIBLE.

Insurance—Implies Due Diligence.

The phrase "as soon as possible," as used in insurance policies, with reference to proof of loss, means with due diligence under the circumstances of the case and without unnecessary and unreasonable delay. Williams v. Rittenhouse, etc., Co., 198 Ill. 609.

AS SOON AS PRACTICABLE.

Construction Contract—Implies Reasonable Diligence.

A construction providing that the balance of the work should be done "as soon as practicable" thereafter, means, by the quoted expression, as soon as possible with the exercise of reasonable diligence under the circumstances of the case and without unnecessary and unreasonable delay, and not as soon as possible with the best appliances and the utmost facilities and extraordinary diligence. Williams v. Rittenhouse, etc., Co., 198 Ill. 609.

AS WELL BEFORE AS AFTER.

Amendments Act—"Either Before or After" Distinguished.

The expression "as well before as after," used in section 4 of the Amendments Act (J. & A. 303), relating to amendments of officers' returns, is not equivalent to "either before or after," but clearly implies the conferring of a like power to do before that which there is already power to do after. Chicago, etc., Co. v. Merchants, etc., Bank, 97 Ill. 301.

ASCENDANTS.

' (Lat. ascendere, to ascend, to go up to, to climb up to). Those from whom a person is descended, or from whom he derives his birth, however remote they may be.

Every one has two ascendants at the first degree, his father and mother; four at the second degree, his paternal grandfather and grandmother, and his maternal grandfather and grandmother; eight at the third. Thus, in going up we ascend by various lines, which fork at every generation. By this progress, sixteen ascendants are found at the fourth degree; thirty-two at the fifth; sixty-four at the sixth; one hundred and twenty-eight at the seventh; and so on. By this progressive increase, a person has at the twenty-fifth generation thirty-three million five hundred and fifty-four thousand four hundred and thirty-two ascendants. But, as

many of the ascendants of a person have descended from the same ancestor, the lines which were forked reunite to the first common ancestor, from whom the other descends; and this multiplication, thus frequently interrupted by the common ancestors, may be reduced to a few persons.

ASCENDIENTES.

In Spanish law. Ascendants; ascending heirs; heirs in the ascending line. White, New Recop. bk. 1, tit 7, c. 3, note; Schmidt, Civ. Law, 259.

ASCERTAIN.

To make certain to the mind; to free from obscurity, doubt or chance; to make sure of; fix; to determine. State v. Illinois C. R. Co., 246 Ill. 229.

To make sure or certain; fix; to establish; to determine; to settle. Norton v. Gale, 95 Ill. 550.

ASCERTAINED BY A JURY.

Constitution of 1870—Ascertainment by Commissioners not Included.

Section 13 of article 2 of the Constitution of 1870, providing that compensation for property taken for public use shall be "ascertained by a jury," where not made by the state does not permit the ascertainment of compensation for land taken for drainage purposes to be ascertained by commissioners. Juvinall v. Jamesburg, etc., District, 204 Ill. 114.

ASPHALTIC CEMENT.

Ordinance—Uncertainty of Meaning Explained by Parol.

In a proceeding to confirm a special assessment, the uncertainty of the term "asphaltic cement," used in a paving ordinance, may be explained by parol evidence showing that the term has a well understood and established meaning among contractors engaged in paving work. Union, etc., Co. v. Chicago, 223 Ill. 38.

ASPHYXIA.

In medical jurisprudence. A temporary suspension of the motion of the heart and arteries; swooning; fainting.

ASPORTATION,

Carrying away. A common-law ingredient of larceny. "There must be such a caption that the accused acquires dominion over the property, followed by such an asportation or carrying away as to supersede the possession of the owner for an appreciable period of time." 94 Ala. 535.

Thus it has been held not larceny to merely set a package of goods on end. with intent to steal it in the future (1 Leg. C. C. 237), or to touch a pocketbook in another's pocket without removing it (99 Mass. 431), or to attempt to carry away property which is attached by a chain to the person of the owner (1 Leg. C. C. 321). On the other hand, the slightest asportation is sufficient, and it has been held larceny to remove a package from one end of a wagon to the other (1 Lag. C. C. 236), or to partly lift money from a pocket, though it was dropped before being entirely removed (1 Moody, C. C. 78; 20 Ohio St. 508).

The asportation need not be by the hand of the trespasser; a carrying away by an innocent agent (125 Mass 390), or by mechanical means, as by fraudulently connecting a private pipe with gas mains (1 Cox, C. C. 213), being sufficient.

ASS.

A quadruped of the genus equus. Ohio & M. R. Co. v. Brubaker, 47 Ill. 463.

ASSACH, OR ASSATH.

In old Weish law. An oath made by compurgators. Applied in St. 1 Hen. V. c. 6, to the Weish custom of clearing one accused of homicide by the oaths of three hundred persons.

The origin and exact meaning of the term is uncertain, and Mr. Barrington could only collect its meaning from the above statute. Barr. Obs. St. 382.

ASSART, OR ESSART.

In English forest and ecclesiastical law. The offense of pulling up by the roots the woods that are thickets and coverts for the deer, and making them clear as arable land. Manw. For. Law, p. 2, c. 9, note 1; Cowell; 1 Crabb, Real Prop. pp. 486, 487, § 627.

Written, in the law Latin, assartum, in Bracton and Fleta, and essartum, in the Charta de Foresta and the Black Book of the Exchequer.

ASSASSINATION.

Murder committed for hire, without provocation or cause of resentment given to the murderer by the person upon whom the crime is committed. Ersk. Inst. bk. 4, tit. 4, note 45.

A murder committed treacherously, with advantage of time, place, or other circumstances.

In modern usage, at least, it is not a technical term of the law of homicide.

ASSAULT.

A violent attempt, coupled with a present ability, to do a bodily injury. Harrison v. Ely, 120 Ill. 85.

An unlawful offer or attempt with force or violence to do a corporal hurt to another. It may consist of any act tending to such injury, and accompanied by such circumstances as denote an intention and a present ability of personal violence. 1 Hill (N. Y.) 351.

Force unlawfully directed or applied to the person of another under such circumstances as to cause a well-founded apprehension of immediate peril.

Aggravated.

Aggravated assault is one committed with the intention of committing some additional crime, or under circumstances of peculiar turpitude.

Simple.

Simple assault is one committed with no intention to do any other injury.

Coupled with Battery.

Assault is generally coupled with battery, and for the excellent practical reason that they generally go together; but the assault is rather the initiation or offer to commit the act of which the battery is the consummation. An assault is included in every battery. 1 Hawk. P. C. c. 62, § 1.

What Does Not Constitute.

Mere words do not constitute an assault (59 Ind. 300), but some overt act is required (55 Hun [N. Y.] 214).

Criminal Code—"Assault and Battery" Distinguished.

"Assault" and "assault and battery" are distinct offenses under sections 20 and 21 of the Criminal Code (J. & A. 3502, 3503). Hunt v. People, 53 Ill. App. 112.

Statutory Definition.

An unlawful attempt, coupled with a present ability, to do a violent injury upon the person of another. Criminal Code 20 (J. & A. 3502); People v. O'Gara, 271 Ill. 143; Addison v. People, 193 Ill. 417; Kennedy v. People, 122 Ill. 655.

ASSAULT AND BATTERY.

At Common Law.

A successful attempt to commit violence to the person and necessarily intentional. Razor v. Kinsey, 55 Ill. App. 613.

Criminal Code—Statutory Definition.

The unlawful beating of another. Criminal Code 21 (J. & A. 3503); In re Murphy, 109 Ill. 33; Hunt v. People, 53 Ill. App. 112.

ASSAULT WITH INTENT TO MURDER.

Criminal Code—Statutory Definition.

Whoever attempts to commit murder by poisoning, drowning, strangling or suffocating another, or by any means, is guilty of "assault with intent to murder," within the meaning of the Criminal Code 24 (J. & A. 3506).

ASSAULTING, &C.

Pleading-"&c" Includes Battery.

A plea to a declaration alleging an assault, battery and imprisonment, of which plea the introductory allegation is, "as to the assaulting, &c., the same plaintiff, and imprisoning," followed by the justification that defendant was city marshal, and arrested plaintiff for being drunk and disturbing the peace, includes, by the sign "&c.," the beating alleged in the declaration, without setting it out at length, so as to answer sufficiently the allegation of a battery. Bryan v. Bates, 15 Ill. 88.

ASSAY.

The proof or trial of the purity or fineness of metals, particularly the precious metals, gold and silver.

ASSECURATION.

In European law. Assurance; insurance of a vessel, freight or cargo. Opposition to the decree of Grenoble. Ferriere.

ASSEDATION.

In Scotch law. An old term, used indiscriminately to signify a lease or feuright. Bell Dict.; Ersk. Inst. lib. 2, tit. 6, § 20.

ASSEMBLY.

The meeting of a number of persons in the same place.

Unlawful Assembly.

The meeting of three or more persons to do an unlawful act, although they may not carry their purpose into execution. It differs from a riot or rout because in each of the latter cases there is some act done besides the simple meeting. See 1 Ired. (N. C.) 30; 9 Car. & P. 91, 431; 5 Car. & P. 154; 1 Bish. Crim. Law, § 395; 2 Bish. Crim. Law, § 1039, 1040.

ASSEMBLY GENERAL

The supreme ecclesiastical court in Scotland.

ASSENT.

Defined and Distinguished.

Approval of something done. An undertaking to do something in compliance with a request.

In strictness, "assent" is to be distinguished from "consent," which denotes a willingness that something about to be done be done; "acceptance" compliance with, or receipt of, something offered: "ratification," rendering valid something done without authority; and "approval," an expression of satisfaction with some act done for the benefit of another besides the party approving. But in practice the term is often used in the sense of acceptance and approval. Thus, an offer is said to be assented to, although properly an offer and acceptance complete an agreement. It is apprehended that this confusion has arisen from the fact that a request, assent, and concurrence of the party requesting complete a contract as fully as an offer and acceptance. Thus, it is said there must be a request on one side, and assent on the other, in every contract (5 Bing. N. C. 75), and this assent becomes a promise enforceabe by the party requesting, when he has done anything to entitle him to the right. Assent thus becomes in reality (so far as it is assent merely, and not acceptance) an offer made in response to a request. Assent and approval, as applied to acts of parliament and of congress, have become counfounded, from the fact that the bills of parliament were originally requests from parliament to the king. See 1 Bl. Comm. 183.

Express Assent.

Express assent is that which is openly declared.

Implied Assent.

Implied assent is that which is presumed by law.

Knowledge Implied.

"Assent" implies knowledge. Chicago v. Stearns, 105 Ill. 558.

ASSENTING THERETO.

Corporations Act—Recognition of Existing Indebtedness Not Included.

The expression "assenting thereto," used in section 16 of the Corporations Act (J. & A. 2433), relating to the liability of directors and officers of stock corporations for debts of such corporations in excess of the capital stock, refers to the creation of such indebtedness, and does not include a mere recognition of the indebtedness after it had become binding on the corporation. Lewis v. Montgomery, 145 Ill. 47.

ASSERTORY COVENANT.

One which asserts or warrants the existence of a particular state of facts.

ASSESS.

To rate or fix the proportion which every person has to pay of any particular tax

To tax.

To adjust the shares of a contribution by several towards a common beneficial object, according to the benefit received.

To fix the value of; to fix the amount of.

Charter of Illinois Central Railroad Com-

The word "assess," used in the act of 1859 relating to the manner of assessing the state tax provided in section 22 of the charter of the Illinois Central Railroad Company, has the same meaning as when used in the Revenue Act of that period. People v. Illinois C. R. Co., 273 Ill. 238.

Taxation.

To impose a tax according to some method or upon a basis of assessed valuation which may be provided by law and which does not violate the mandate of the constitution that every person and corporation shall pay a tax in proportion to

the value of his or her property. People v. Illinois C. R. Co., 273 Ill. 249.

The word "assess," as applied to taxation, implies more than to fix the full valuation at a given rate, and includes all the steps which the law requires to subject the property to the tax. People v. Illinois C. R. Co., 273 Ill. 249.

ASSESSED BY THE AUDITOR.

Railroad Charter—Refers to Assessment Based on Valuation.

The expression "assessed by the auditor," used in section 22 of the charter of the Illinois Central Railroad Company, relating to the state tax provided by that section, refers to an assessment based on valuation. People v. Illinois C. R. Co., 273 Ill. 239.

ASSESSED LANDS.

Drainage Act.

The "assessed lands," referred to in section 1 of the act of 1889 (J. & A. 4576), relating to the dissolution of drainage districts, are the lands which have been classified above zero under the act of 1885 (J. & A. 4475 et seq.), known as the Farm Drainage Act, and to which classification no appeal has been taken, and does not include lands classified below zero under the same act, or refer to those as to which costs and benefits have been apportioned under section 26 of the act (J. & A. 4502). Cosby v. Barnes, 251 Ill. 463.

ASSESSMENT.

Determining the value of a man's property or occupation for the purpose of levying a tax.

Determining the share of a tax to be paid by each individual.

Laying a tax.

Adjusting the shares of a contribution by several towards a common beneficial object, according to the benefit received. The term is used in this latter sense in New York, distinguishing some kinds of local taxation, whereby a peculiar benefit arises to the parties, from general taxation. 11 Johns. (N. Y.) 77; 3 Wend. (N. Y.) 263; 4 Hill (N. Y.) 76; 4 N. Y. 419.

Damages.

Fixing the amount of damages to which the prevailing party in a suit is entitled. It may be done by the court through its proper officer, the clerk of prothonotary, where the assessment is a mere matter of calculation, but must be by a jury in other cases. See "Damages."

In Insurance.

An apportionment made in general average upon the various articles and interests at risk, according to their value at the time and place of being in safety, for contribution for damages and sacrifices purposely made, and expenses incurred for escape from impending common peril. 2 Phil. Ins. c. 25.

As Applied to Stock Subscription.

The word "assessment," as applied to stock subscriptions, is a rating or fixing of the proportion, by the board of directors, which each subscriber is to pay of his subscriptions, when notified of it, and when called on. Spangler v. Indiana I. C. R. Co., 21 Ill. 278.

Local Improvements-Common Meaning.

The popular understanding of the use of the word "assessment," refers specifically to those charges imposed upon real property by the city to defray the expense of local improvements, in proportion to the benefits received. Stephani v. Catholic Bishop, 2 Ill. App. 254.

Taxation.

The term "assessment," as applied to taxation, is the proceeding by which the tax is imposed. Stephani v. Catholic Bishop, 2 Ill. App. 253.

Common Meaning.

As the word "assessment" is commonly used with reference to taxation, it consists in the two processes of listing the persons, property, etc., to be taxed and of estimating the sums which are to be the guide in an apportionment of the tax between them. People v. Illinois C. R. Co.,

273 Ill. 249; Chicago v. Fishburn, 189 Ill. 375; Myers v. Ruddy, 154 Ill. App. 440.

Strict Meaning.

An official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district. People v. Illinois C. R. Co., 273 Ill. 249.

ASSESSOR—ASSESSORS.

Assessors are appointed to make assessments.

In Civil and Scotch Law.

Persons skilled in law, selected to advise the judges of the inferior courts. Bell, Dict.; Dig. 1. 22; Code, 1. 51.

Revenue Act—Statutory Definition.

The word "assessor," or "assessors," when used in the Revenue Act, means town, district and deputy assessors. Revenues Act 292 (J. & A. 9511).

ASSETS.

(Fr. assez, enough). All the stock in trade, cash, and all available property belonging to a merchant or company.

Equivalent to "property." 2 Sandf. (N. Y.) 202.

The property in the hands of an heir, executor, administrator, or trustee, which is legally or equitably chargeable with the obligations which such heir, executor, administrator, or other trustee is, as such, required to discharge.

Equitable Assets.

Such as can be reached only by the aid of a court of equity, and which are to be divided, pari passu, among all the creditors. 2 Fonbl. Eq. 401 et seq.; Willis, Trustees, 118.

Legal Assets.

Such as constitute the fund for the payment of debts according to their legal priority.

Assets per Descent.

That portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far it goes, with the specialty debts of his ancestors. 2 Williams, Ex'rs, 1011.

Personal Assets.

Goods and personal chattels to which the executor or administrator is entitled.

Real Assets.

Such as descend to the heir, as, an estate in fee simple.

ASSEVERATION.

The proof which a man gives of the truth of what he says, by appealing to his conscience as a witness. It differs from an oath in this, that by the latter he appeals to God as a witness of the truth of what he says, and invokes him, as the avenger of falsehood and perfidy, to punish him if he speaks not the truth.

ASSIGN.

To make or set over to another. Cowell; 2 Bl. Comm. 326; 5 Johns, (N. Y.) 391.

To appoint; to select; to allot. 3 Bl. Comm. 58.

To set forth; to point out; as, to assign errors. Fitzh. Nat. Brev. 19.

ASSIGNEE.

One to whom an assignment has been made

Assignee in fact is one to whom an assignment has been made in fact by the party having the right.

Assignee in law is one in whom the law vests the right; as, an executor or administrator. See "Assignment."

Insolvents Act—In Effect Statutory Re-

The assignee under the act of 1877 (J. & A. 6234 et seq.), known as the Voluntary Assignments Act, is in effect a statutory receiver—that is, he receives and holds in trust the property of the assignor under the conditions, with the powers and duties possessed under the

common law by receivers, modified and controlled by the statute. Danforth v. Stone, 128 Ill. App. 60.

ASSIGNEES.

Those to whom rights have been transmitted, by particular title, such as sale, gift, legacy, transfer, or cession. Ball v. Chadwick, 46 Ill. 31; Brockmeyer v. Sanitary District, 118 Ill. App. 57.

ASSIGNMENT.

(Law Lat. assignatio, from assigno,—ad and signum,—to mark for; to appoint to one; to appropriate to). At common law. "The transferring and setting over to another of some right, title, or interest in things in which a third party, not a party to the assignment, has a concern and interest." 1 Bac. Abr. 329; 1 Iowa, 582.

It is more loosely used to indicate any transfer or making over to another of the whole of any property, real or personal, in possession or in action, or for any estate or right therein. 35 Fed. 436; 78 Iowa, 101; 3 Minn. 389 (Gil. 282); 16 Barb. (N. Y.) 580.

The transfer of interest one had in lands and tenements, and more particularly applied to the unexpired residue of a term or estate for life or years. Tober v. Collins, 130 Ill. App. 336.

Common Meaning—Includes All Transfers of Property.

In common parlance the word "assignment" signifies the transfer of all kinds of property, real, personal and mixed, and whether the same be in possession or in action, as a general assignment. Ball v. Chadwick, 46 Ill. 31; Brockmeyer, Sanitary District, 118 Ill. App. 57.

"Mortgage" Distinguished—For Benefit of Creditors.

A fundamental distinction between a mortgage and an assignment is that a mortgage is a mere security for a debt, the equity of redemption remaining in the mortgagor, while an assignment is more than a security for a debt, and is an ab-

solute appropriation of the property for its payment. Weber v. Mick, 131 Ill. 534.

Insolvents Act.

The common acceptation of the term "assignment," as used in the act of 1877 (J. & A. 6234 et seq.), known as the Voluntary Assignments Act, is that it is a transfer, without compulsion of law, by a debtor of his property, in trust, to apply the same or the proceeds thereof to the payment of his debts, and to return the surplus, if any, to the debtor. Walker v. Ross, 150 Ill, 55; Farwell v. Cohen, 138 Ill. 227; Farwell v. Nilsson, 133 Ill. 49; Weber v. Mick, 131 Ill. 533; Ross v. James H. Walker Co., 52 Ill. App. 141.

Real Estate—Technical Meaning.

In a technical sense, the word "assignment" is usually applied to the transfer of a term of years, but it is more particularly used to signify a transfer of some particular estate or interest in land. Ball v. Chadwick, 46 Ill. 31; Brockmeyer v. Sanitary District, 118 Ill. App. 57.

Sealed Instrument not Imported.

The word "assignment" does not import an instrument under seal. Barrett v. Hinckley, 124 Ill. 39.

ASSIGNMENT OF A TERM.

"Lease" Distinguished.

An assignment of a term is the transfer of the whole estate of the tenant therein to a third person, and different from a lease in this; that by the latter the lessor grants an interest less than his own, reserving to himself a reversion, but by an assignment he parts with the whole property. Chicago, etc., Co. v. Davis, etc., Co., 142 Ill. 181.

ASSIGNMENT OF DOWER.

The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her.

The assignment may be made in pais by the heir of his guardian, or the devisee or other persons seised of the lands subject to dower (19 N. H. 240; 23 Pick. [Mass.] 80, 88; 4 Ala. [N. S.] 160; 4 Me. 67; 2 Id. 388; White & T. Lead. Cas. 51), or it may be made after a course of judicial proceedings, where a voluntary assignment is refused. In this case, the assignment will be made by the sheriff, who will set off her share by metes and bounds. 2 Bl. Comm. 136; 1 Washb. Real Prop. 229. The assignment should be made within forty days after the death of the husband, during which time the widow shall remain in her husband's capital mansion house.

ASSIGNMENT OF ERRORS.

Function.

The statement of the case of the plaintiff in error on a writ of error setting forth the errors complained of. It corresponds with the declaration in an ordinary action. 2 Tidd. Prac. 1168; 3 Steph. Comm. 644.

"An assignment of errors is in effect a pleading, and performs the same office as a declaration in a court of original jurisdiction." Ditch v. Sennott, 116 Ill. 290; Williston v. Fisher, 28 Ill. 43; Brown v. Otrich, 119 Ill. App. 137; Marsh v. Jones, 106 Ill. App. 578; Jesse French, etc., Co. v. Meehan, 77 Ill. App. 577; Lang v. Max, 50 Ill. App. 466; Conlon v. Manning, 43 Ill. App. 363.

ASSIGNS.

Covenant-Includes Grantees.

The word "assigns," in a covenant to convey land, cannot be limited to assignees of the contract but includes grantees. Torrence v. Shedd, 156 Ill. 210.

Deed-Includes Tenant for Years.

The word "assigns," used in a deed, includes tenants for a term of years. Brockmeyer v. Sanitary District, 118 Ill. App. 57.

ASSISA.

(Lat. assidere). A kind of jury or inquest. Assisa vertitur in juratum, the

assize has been turned into a jury. See "Assize."

A writ, as, an assize of novel disseisin, assize of common pasture.

An ordinance, as assisa panis. Spelman; Litt. § 234; 3 Sharswood, Bl. Comm. 402.

A fixed specific time, sum, or quantity; a tribute; tax fixed by law; a fine. Spelman.

ASSISORS.

In Scotch law. Jurors.

ASSISTED, AIDED AND ABETTED.

Pleading—Importing Active Participation.

In an action against undertakers for removing hair from the head of a dead woman, a declaration alleging, inter alia, that defendants "assisted, aided and abbetted" in the act sought to be recovered for imports, by the quoted expression, either active participation or cooperation, or intentional encouragement. Mensinger v. O'Hara, 189 Ill. App. 50.

ASSISUS.

(Lat. from assidere, to fix or settle.) In old English law. Fixed or certain. Assisus reditus, a fixed, certain, or standing rent. Kennett, Par. Ant. 314, 335. Called "rent of assize." 2 Bl. Comm. 42. Terra assisa, land let or farmed out for a certain assessed rent. Cowell.

Assithment.

Compensation by a pecuniary mulct. Cowell.

ASSIZE.

(Lat. assidere, to sit by or near, through the Fr. assisa, a session.)

In English Law.

A writ directed to the sheriff for the recovery of immovable property, corporeal or incorporeal. Cowell; Litt. § 234.

The action or proceedings in court based upon such a writ. Magna Charta,

c. 12; St. 13 Edw. I. (Westminster II.)
c. 25; 3 Bl. Comm. 7, 252; Sellon, Prac.
Introd. xii.

Such actions were to be tried by special courts, of which the judicial officers were justices of assize. See "Courts of Assize and Nisi Prius." This form of remedy is said to have been introduced by the parliament of Northampton (or Nottingham, A. D. 1176), for the purpose of trying titles to land in a more certain and expeditious manner before commissioners appointed by the crown than before the suitors in the county court of the king's justiciars in the aula regis. The action is properly a mixed action, whereby the plaintiff recovers his land and damages for the injury sustained by the disseisin. The value of the action as a means for the recovery of land led to its general adoption for that purpose; those who had suffered injury not really amounting to a disseisin alleging a disseisin to entitle themselves to the remedy. The scope of the remedy was also extended so as to allow the recovery of incorporeal hereditaments, as franchises, estovers, etc. It gave place to the action of ejectment, and is now abolished, having been previously almost, if not quite, entirely disused. St. 3 & 4 Wm. IV. c. 27, § 36. Stearns, Real Actions, 187.

A jury summoned by virtue of a writ of assize.

The verdict or judgment of the jurors or recognitors of assize. 3 Bl. Comm. 57, 59.

A court composed of an assembly of knights and other substantial men, with the baron or justice, in a certain place, at an appointed time. Grand Coutum, ec. 24, 25.

An ordinance or statute. Litt. § 234, Reg. Orig. 239. Anything reduced to a certainty in respect to number, quantity, quality, weight, measure, etc. 2 Sharswood, Bl. Comm. 42; Cowell; Spelman, "Assisa." See the articles immediately following.

In Scotch Law.

The jury, consisting of fifteen men, in criminal cases tried in the court of justiciary. Paterson, Comp.; Bell, Dict.

ASSIZE OF DARREIN PRESENTMENT.

A writ of assize which formerly lay for a person who had himself, or whose ancestors had upon the last preceding avoidance, presented a clerk to a benefice where a stranger presented a clerk for the purpose of obtaining a writ commanding the bishop to institute the patron's clerk, and to obtain damages for the interference. 3 Sharswood, Bl. Comm. 245; St. 13 Edw. I. (Westminister II.) c. 5. It has given way to the remedy by quare impedit.

ASSIZE OF FRESH FORCE.

A writ of assize which lay where the disselsin had been committed within forty days. Fitzh. Nat. Brev. 7.

ASSIZE OF MORT D'ANCESTOR.

A writ of assize which lay to recover possession of lands against an abator or his alienee. It lay where the ancestor from whom the claimant derived title died seised. Cowell; Spelman; 3 Sharswood, Bl. Comm. 185.

ASSIZE OF NOVEL DISSEISIN.

A writ of assize which lay where the claimant had been lately disseised. The action must have been brought subsequent to the next preceding session of the eyre or circuit of justices which took place once in seven years. Co. Litt. 153; Booth, Real Actions, 210.

ASSIZE OF NUISANCE.

A writ of assize which lay where a nuisance had been committed to the complainant's freehold.

The complainant alleged some particular fact done which worked an injury to his freehold (ad nocumentum liberi tenementi sui), and, if successful, recovered judgment for the abatement of the nuisance, and also for damages. Fitzh. Nat. Brev. 183; 3 Sharswood, Bl. Comm. 221; 9 Coke, 55.

ASSIZE OF THE FOREST.

A statute or ordinance concerning the royal forests passed in the thirty-third year of Edw. I. Otherwise called Ordinatio Forestae. Another statute of the same title was passed in the thirty-fourth year of Edw. I. 2 Reeve, Hist. Eng. Law, 104, 106; Co. Litt. 159b.

ASSIZE OF UTRUM.

A writ of assize which lay for a parson to recover lands which his predecessor had improperly allowed the church to be deprived of. 3 Bl. Comm. 257.

ASSIZE RENT.

The fixed or established rent of the freeholders and ancient copyholders of a manor, which cannot be departed from or varied. 2 Bl. Comm. 42.

ASSIZES.

Sessions of the justices or commissioners of assize. These assizes are held twice in each year in each of the various shires of England, with some exceptions, by virtue of several commissions, for the trial of matters of fact in issue in both civil and criminal cases. They still retain the ancient name in popular language, though the commission of assize is no longer issued. 3 Steph. Comm. 424, note.

ASSIZES DE JERUSALEM.

A code or feudal law prepared at a general assembly of lords after the conquest of Jerusalem. It was compiled principally from the laws and customs of France. It was reduced to form by Jean d'Iblin, Comte de Japhe et Ascalon, about the year 1290. 1 Fournel, Hist. des Av. 49; 2 Dupin, Prof. des Av. 674-680; Steph. Pl. Append. xi.

ASSOCIATED PRESS.

A corporation organized under the laws of the state of Illinois in 1892, whose object is to buy, gather and accumulate information and news to vend, supply, distribute and publish the same; to purchase, erect, lease, operate and sell telegraph and telephone lines and other means of transmitting news to public periodicals; to make and deal in periodicals and other goods, wares and merchandise. Inter-Ocean, etc., Co. v. Associated Press, 184 Ill. 442.

ASSOCIATION.

A body of persons acting together without a charter but upon methods and forms used by incorporated bodies for the prosecution of some common enterprise. People v. Brander, 244 Ill. 31.

In English Law.

A writ directing certain persons (usually the clerk and his subordinate officers) to associate themselves with the justices and sergeants for the purpose of taking the assizes. 3 Sharswood, Bl. Comm. 59.

Applied to Partnerships and Unincorporated Companies.

The term "association" is sometimes applied to large partnerships and unincorporated companies, or to corporations formed not for profit but for the advancement of some object in which the members are interested. People v. Brander, 244 Ill. 31.

Vague Term.

The word "association" is a term of vague meaning, used to indicate a collection of persons who have joined together for a certain object, which may be for the benefit of its members, or the improvement, welfare or advantage of the public, or some scientific, charitable, or other purpose. People v. Brander. 244 Ill. 31.

ASSUME.

To take on; to undertake. 90 Cal. 147. To take in appearance. See 75 Cal. 73.

Deed-Importing Liability to Pay.

The word "assume," used in deeds with reference to incumbrances on the prop-

erty conveyed, has the same meaning as if the words "to pay" followed it, and amounts to a personal covenant to pay. Thomas v. Home, etc., Ass'n, 243 Ill. 557; Springer v. DeWolf, 194 Ill. 224; Springer v. DeWolf, 93 Ill. App. 263; Eggleston v. Morrison, 84 Ill. App. 631.

Legal Meaning.

The definition of the word "assume," in law, is "to take upon one's self." Springer v. DeWolf, 194 Ill. 222; Springer v. DeWolf, 93 Ill. App. 263.

ASSUMED RISKS.

Those which cannot be obviated by the adoption of reasonable measures or precaution by the master. Hinchliff v. Robinson, 118 Ill. App. 456.

ASSUMERE.

A Latin word, definable as "to assume or to undertake." Highway Commissioners v. Bloomington, 253 Ill. 171.

ASSUMPSIT.

In Contracts.

An undertaking, either express or implied, to perform a parol agreement. 1 Lilly, Reg. 132.

In the law of contracts at common law, the word "assumpsit" was understood as an undertaking, express or implied, to perform a parol agreement. Highway Commissioners v. Bloomington, 253 Ill. 171.

Express assumpsit is an undertaking made orally by writing not under seal, or by matter of record, to perform an act, or to pay a sum of money to another.

Implied assumpsit is an undertaking presumed in law to have been made by a party, from his conduct, although he has not made any express promise.

In Practice.

A form of action which lies for the recovery of damages for the nonperformance of a parol or simple contract. 7 Term R. 351; 3 Johns. Cas. (N. Y.) 60.

It differs from debt, since the amount claimed need not be liquidated (see "Debt"), and from covenant, since it does not require a contract under seal to support it (see "Covenant"). See 4 Coke, 91; 4 Burrows, 1008; 14 Pick. (Mass.) 428; 2 Metc. (Mass.) 181. Assumpsit is one of the class of actions called "actions upon the case," and in the older books is called "action upon the case assumpsit." Comyn, Dig.

Special assumpsit is an action of assumpsit brought upon an express contract or promise.

General assumpsit, sometimes called indebitatus assumpsit, is an action of assumpsit brought upon the promise or contract implied by law in certain cases. See 2 Smith, Lead. Cas. (5th Am. Ed.) 14.

Derivation.

The word "assumpsit" is derived from the Latin word "assumere." Highway Commissioners v. Bloomington, 253 Ill. 171. See also Assumere.

Forms.

At common law there are two forms of the action of assumpsit, "general assumpsit," and "special assumpsit." Highway Commissioners v. Bloomington, 253 Ill. 172.

Nature.

The action of assumpsit is a transitory action. Buchanan v. Scottish Union & National Ins. Co., 210 Ill. App. 523.

Technical Meaning.

Assumpsit is technically an action on the case which may be resorted to when there is a breach of contract, express or implied, for the payment of money or for the performance or omission of any other act. Highway Commissioners v. Bloomington, 253 Ill. 171; Willenborg v. Illinois C. R. Co., 11 Ill. App. 302; Carter v. White, 32 Ill. 510.

ASSUMPTION.

The agreement of the transferee of property to pay obligations of the transferer which are chargeable on it. Springer | liv. 3, tit. 6; Emerig. Tr. des Assur.

v. DeWolf, 194 Ill. 222; Springer v De-Wolf, 93 Ill. App. 263.

ASSUMPTION OF RISK.

A term of the contract of employment, express or implied from the circumstances of the employment, by which the servant agrees that dangers of injury obviously incident to the discharge of the servant's duty shall be the servant's risk. Streeter v. Western, etc., Co., 254 Ill. 251.

Contributory Negligence Distinguished.

Assumption of risk is to be distinguished from contributory negligence in that the first rests on the law of contracts, while the latter rests on the law of torts. Chicago, etc., v. Mueller, 106 Ill. App. 28.

ASSURANCE.

In Conveyancing.

Any instrument which confirms the title to an estate.

Legal evidence of the transfer of property. 2 Bl. Comm. 294.

The term "assurances" includes, in an enlarged sense, all instruments which dispose of property, whether they be the grants of private persons, or not; such are fines and recoveries, and private acts of the legislature. Eunom. Dial. 2, § 5.

In Commercial Law.

A term formerly used in English maritime law, in the sense of the modern term "insurance," and still retained in policies, but otherwise obsolete. Molloy de Jur. Mar. 287. Latterly however, its use had been revived in its application to contracts of indemnity against life contingencies, which are now frequently termed "assurances upon lives," by way of distinction from indemnity against losses by fire or at sea, etc., to which the term "insurance" is particularly appropriated. 3 Kent, Comm. 365. The word "assured" has always been retained in its ancient sense. See "Assure." "Assurance" is the term used in French law. Ord. Mar.

ASSURE.

(Fr. assurer; law Lat. assecurare, assurare.) To make sure, or secure; to confirm or establish; to insure. The party in whose favor a contract or policy of insurance has been executed is still called the "assured;" the other party being termed the "insurer." 2 Steph. Comm. 172.

To convey. "If one be obliged to assure twenty acres of land," etc. Cro. Eliz. 665. See "Assurance."

ASTRUM.

A house, or place of habitation. Bracton, fol. 367b; Cowell.

ASYLUM.

An institution for the protection or relief of the unfortunate, as an asylum for the poor, for the deaf and dumb, or for the insane. Webster.

In International Law.

Refuge to a fugitive from justice.

In Old English Law.

A sanctuary.

AT.

As Word of Limitation—Meaning Determined by Context.

The word "at" is generally used as a word of limitation, but its meaning is governed by the context, which determines whether it is to be used in an inclusive or exclusive sense. Webster v. French, 12 Ill. 304.

Place-Imports Relation of Proximity.

The word "at," as applied to place, means a relation of proximity to; nearness; near; about. West Chicago S. R. Co. v. Manning, 70 Ill. App. 242.

When "In" or "Near" Synonymous.

The word "at," when used in regard to place, means either "in" or "near." Hurley v. Marsh, 2 Ill. 329.

Place or Time—Expresses Relation of Presence.

The word "at," when used in regard to either place or time, expresses the relation of presence or nearness. Howe v. Warren, 154 Ill. 247.

Time.

In its customary acceptation, the word "at," used as descriptive of time, is generally understood to mean "at the time of,"—not before or after. Howe v. Warren, 154 Ill. 247.

AT ALL REASONABLE TIMES.

Contract

A contract between an insured and an insurer that the insurer shall have access to the books of insured "at all reasonable times" includes, by the quoted expression, a right to inspect the books before trial, to prepare for trial, as well as an examination of the books at the trial. Swedish-American, etc., Co. v. Fidelity, etc., Co., 208 Ill. 564.

AT ANY TIME.

Warrant of Attorney—Authorizes Confession Before Maturity.

A warrant of attorney to confess judgment on a promissory note "at any time" after date authorizes such confession at any time after the delivery of the note, whether before or after maturity. Thomas v. Mueller, 106 Ill. 43; Adam v. Arnold, 86 Ill. 186; Sherman v. Baddely, 11 Ill. 623; Elkins v. Wolfe, 44 Ill. App. 380; Cohen v. Burgess, 44 Ill. App. 207.

Confession on Date of Note Not Authorized.

A warrant of attorney to confess judgment "at any time" after date does not authorize such a confession on the date of the note. White v. Jones, 38 Ill. 163; Waterman v. Jones, 28 Ill. 55.

AT CHICAGO.

Railroad Charter—Any Place in Chicago Included.

A railroad charter empowering the railroad to fix its terminus "at Chicago" empowers it to locate its tracks and fix its terminus at any point in Chicago. Chicago & N. W. Ry. Co. v. Chicago, etc., Institute, 239 Ill. 203.

AT GRADE.

Railroad Crossing.

A railroad crossing "at grade" is a crossing on the same level as the railroad right of way. Illinois C. R. Co. v. Chicago, 141 Ill. 599.

AT HER DEATH.

Will.

A will devising property to a widow for life and "at her death" to revert to the estate of the testator, refers, by the quoted expression, not to the time of ascertaining the persons who may be entitled to the estate, but to the time when such persons shall come into the possession and enjoyment of it. Downing v. Grigsby, 251 Ill. 573.

AT ISSUE.

Pleading.

Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be "at issue." Willard v. Zehr, 215 Ill. 154; Washington v. Louisville & N. R. Co., 136 Ill. 52.

AT LEAST FIVE DAYS.

Revenue Act-When Sunday Included.

Section 188 of the Revenue Act (J. & A. 9407), requiring the delinquent list to be filed "at least five days" before the commencement of the term of court at which application for judgment is made, does not require five full days at the shortest, being governed by clause 11 of section 1 of the Statutes Act (J. & A. 11102), providing that computing the time which any act is required to be done, Sunday shall be excluded when the last day, so that where Sunday is one of the days included, but not the last, it is included. Prior v. People, 107 Ill. 630.

AT LEAST FIVE SUCCESSIVE DAYS.

Cities and Villages Act of 1874—Sunday Not Included.

The expression "at least five successive days," used in section 26 of article 9 of the Cities and Villages Act of 1874, relating to publication of notices of special assessments, does not include Sunday, so that a certificate of publication showing publication for five successive days, with the exception of an intervening Sunday, is a compliance with the statute. McChesney v. People. 145 Ill. 618.

AT LEAST TEN DAYS' NOTICE.

Cities and Villages Act of 1874—Sunday Not Included.

The expression of "at least ten days notice," used in section 26 of article 9 of the Cities and Villages Act of 1874, relating to notice of special assessments by posting, does not exclude an intervening Sunday or require an interval of ten secular days. Gordon v. People, 154 Ill. 666.

AT ONCE.

The words "at once" used in a life insurance policy providing that insured should give notice "at once" to the insurer of any sickness or accident to the insured animal mean what the average person would understand them to mean, namely, promptly, as soon as reasonably could be done. Van Volkenburg v. Granite Life Ins. Co., 205 Ill. App. 28.

AT PRESENT ORGANIZED.

Corporations Act—Includes Future Corporations.

The expression "at present organized," used in section 1 of the act of 1895 (J. & A. 2485), relating to fees for incorporation, is to be construed as inclusive of all present and future organized corporations and as though the language had been "at present organized or that may be organized in the future." People v. Hinrichsen, 161 Ill. 227.

AT RATES AS FAVORABLE.

Ordinance-Means at Current Rates.

A provision in an ordinance that a gas company shall furnish a city with gas "at rates as favorable" as those given to another city, means no more than that gas shall be furnished at prices as low as the current rates, from time to time, charged for gas in such other city. Decatur, etc., Co. v. Decatur, 120 III., 70.

AT SEA.

Outside of port. In opposition to being "in port;" not in opposition to being "at home." 3 Hill (N. Y.) 118.

AT TEN PER CENTUM FROM DATE.

Promissory Note.

A promissory note containing the expression "at ten per centum from date" is to be construed as meaning bearing interest at ten per centum per annum from date. Thompson v. Hoagland, 65 Ill. 321.

AT THE COMMENCEMENT OF SAID CAUSE.

Bill of Exceptions—Refers to Commencement of Trial.

A statement in a bill of exceptions that the court, "at the commencement of said cause," heard the arguments, etc., refers, by the quoted expression, to the time when the trial began and not to the time when the writ was sued out. Leon v. Goldsmith, 69 Ill. App. 25.

AT THE CORNER.

Pleading-Variance.

There is no variance between a declaration alleging that an accident occurred "at the corner" of two named streets and proof that it occurred west of such corner. West Chicago S. R. Co. v. Manning, 70 Ill. App. 242.

AT THE DATE OF THE ASSIGN-MENT.

Insolvents Act.

The expression "at the date of the assignment," used in section 15 of the act

of 1877 (J. & A. 6248), known as the Voluntary Assignments Act, relating to the discontinuance of proceedings under the act, necessarily means at the time when it was in a condition to become, but had not in fact become, effective as an assignment under the statute. Howe v. Warren, 154 Ill. 247.

AT THE DEATH.

Deed-Vests Title Subject to Life Estate.

A deed conveying a farm to grantor's grandson reserving life estate, the title to vest absolutely in the grantee "at the death" of the survivor, but not before, is, not a testamentary instrument but a deed vesting title in the grantee subject to the life estate reserved, and merely postponing his right of possession until the death of the survivor. Venters v. Wickens. 224 Ill. 574.

AT THE DISTANCE OF AT LEAST EIGHTY RODS.

Railroads and Warehouses Act.

Section 6 of the act of 1874 (J. & A. 8817), relating to fencing and operation of railroads, requiring that a bell shall be rung or a whistle sounded "at the distance of at least eighty rods" from the crossing includes cases where the cars begin to move at a point less than eighty feet from the crossing. Lake Shore & M. S. Ry. Co. v. Johnsen, 135 Ill. 641.

AT THE HOUR OF ELEVEN O'CLOCK.

Foreclosure Sale—Means Any Time Between Eleven and Twelve.

A foreclosure sale under power contained in a trust deed is validly held between half past eleven and twelve o'clock in the forenoon although the notice of sale announced the sale to take place "at the hour of eleven o'clock," the rule of law being that in such case "eleven o'clock" means at any time between eleven o'clock and twelve o'clock. McGovern v. Mutual, etc., Co., 109 Ill. 155.

AT THE NORTH DOOR OF THE COURT HOUSE.

Foreclosure Sale.

A trust deed authorizing in case of default a sale "at the north door of the courthouse in Chicago" is satisfied by a sale on the ground in front of a pile of rubbish at the foot of where the steps leading to the north door of the courthouse had been before its destruction in the Chicago fire. Chandler v. White, 84 Ill. 440. See also Waller v. Arnold, 71 Ill. 353 (giving the same construction to a similar expression).

A trust deed authorizing in case of default a sale of the premises "at the north door of the courthouse" in Chicago is satisfied by an affidavit that a sale was made "at the entrance nearest La Salle street on the north side of the courthouse," although subsequently to the execution of the trust deed the courthouse referred to was destroyed in the Chicago Fire, and although the description in the affidavit was of another building used as a courthouse. Alden v. Goldie, 82 Ill. 584.

AT THE TERM.

Attachment Act-Includes Whole Term.

Section 25 of the Attachment Act (J. & A. 516), providing that the declaration in an action of attachment may be filed on the return of the attachment or "at the term" when returnable permits the filing of such declaration on the first or any succeeding day of the term. Lawver v. Langhans, 85 Ill. 141.

AT THE TIME.

Where a testator directed that on the death of his wife his estate be converted into cash, and a portion of it given to his daughter C., and further provided that if she not be living "at the time this will shall be executed" the bequest be given to her daughter, A., the expression "at the time" refers to the time of converting the estate into money and distributing it under the will. Lambert v. Harvey, 100 Ill. 342.

Instructions—Refers to Whole Transaction.

In an action of personal injuries sustained by being struck by a train at a railroad crossing, the expression "at the time," used in an instruction referring to the time of the accident, refers to the whole transaction or series of circumstances from the time the plaintiff began to approach the tracks till he was injured. Chicago C. Ry. Co. v. Ryan, 225 Ill. 292; Chicago & A R. Co. v. Corson, 198 Ill. 103; Lake Shore & M. S. Ry. Co. v. Ouska, 151 Ill. 238; Chicago & A. R. Co. v. Fisher, 141 Ill. 625; McNulta v. Lockridge, 137 Ill. 288; Lake Shore & M. S. Ry. Co. v. Johnsen, 135 Ill. 653; Central Ry. Co. v. Sehnert, 115 Ill. App. 564; Illinois C. R. Co. v. Jernigan, 101 Ill. App. 12.

Removal of Actions—Eminent Domain.

The expression "at the time," used in section 3 of the act of congress regulating removal of actions from a state to a Federal court, relating to the time of filing a petition for such removal, refers, as applied to an eminent domain proceeding, to the return of the petition. South Park Commissioners v. Ayer, 237 Ill. 215.

AT WHICH TIME.

Statute-Exclusive Sense.

The act of 1849, authorizing the sale of certain property owned by the state, and providing that bids should be received by the governor until July 1, 1849, "at which time" he shall open the bids, limits the time for receiving bids to June 30 of that year, and makes invalid any bids filed on July 1. Webster v. French, 12 Ill. 305.

ATTACH.

Liens Act.

The provision in section 3 of the act of 1872 (J. & A. 7185) relating to liens on railroads, that no sub-contractor's lien shall "attach" until notice shall have been served as required in that section, means that the inchoate lien will cease, and not become a fixed lien, if the notice is not

given. St. Louis & P. R. Co. v. Kerr, 153

ATTACHMENT.

Taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it.

A writ for the accomplishment of this purpose. This is the more common sense of the word.

Of Persons.

A writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court.

Of Property.

A writ issued at the institution or during the progress of an action, commanding the sheriff or other proper officer, to attach the property, rights, credits, or effects of the defendant to satisfy the demands of the plaintiff.

The original design of this writ was to secure the appearance of one who had disregarded the original summons, by taking possession of his property as a pledge. 3 Bl. Comm. 280.

By an extension of this principle, in the New England states, property attached remains in the custody of the law after an appearance, until final judgment in the suit. See 7 Mass. 127.

ATTACHMENT OF PRIVILEGE.

In English law. A process by which a man, by virtue of his privilege, calls another to litigate in that court to which he himself belongs, and who has the privilege to answer there.

A writ issued to apprehend a person in a privileged place. Termes de la Ley.

ATTACHMENT OF THE FOREST.

One of the three courts formerly held in forests. The highest court was called "justice in eyre's seat;" the middle, the "swainmote;" and the lowest, the "attachment." Manw. For. Law, 90, 99.

ATTAINDER.

Defined.

That extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony receives sentence of death for his crime. 1 Steph. Comm. 408; 1 Bish. Crim. Law, § 641.

By Confession.

Attainder by confession is either by pleading guilty at the bar before the judges, and not putting one's self on one's trial by a jury, or before the coroner in sanctuary, when, in ancient times, the offender was obliged to abjure the realm.

By Verdict.

Attainder by verdict is when the prisoner at the bar pleads not guilty to the indictment, and is pronounced guilty by the verdict of the jury.

By Process or Outlawry.

Attainder by process or outlawry is when the party flies, and is subsequently outlawed. Co. Litt. 391.

Effect Upon Felon.

The effect of attainder upon a felon is, in general terms, that all his estate, real and personal, is forfeited; that his blood is corrupted, and so nothing passes by inheritance to, from, or through him (1 Wm. Saund. 361, note; 6 Coke, 63a, 68b; 2 Rob. Ecc. 547; 24 Eng. Law & Eq. 598); that he cannot sue in a court of justice (Co. Litt. 130a). See 2 Gibbett, Crim. Law; 1 Bish. Crim. Law, § 641.

ATTAINT.

Attainted, stained, or blackened.

A writ which lies to inquire whether a jury of twelve men gave a false verdict. Bracton, lib. 4, tr. 1, c. 134; Fleta, lib. 5, c. 22, § 8.

This letter was a trial by jury of twenty-four men impanelled to try the goodness of a former verdict. 3 Bl. Comm. 351; 3 Gilb. Ev. (Lofft Ed.) 1146. See "Assize."

ATTEMPT.

In criminal law. An endeavor to accomplish a crime carried beyond mere preparation for it, but falling short of the ultimate design. 5 Cush. (Mass.) 367.

An intended, apparent, unfinished crime. Dahlberg v. People, 225 Ill. 488; Graham v. People, 181 Ill. 489.

An act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except all the elements of the substantive crime; an effort to endeavor to commit a crime amounting to more than a mere preparation for it, and which, if not prevented, would result in the full consummation of the act attempted, but which in fact does not bring to pass the party's ultimate design. Graham v. People, 181 Ill. 489.

An intent to do a particular thing, with an act toward it falling short of the thing intended. Graham v. People, 181 Ill. 489; Scott v. People. 141 Ill. 204.

An endeavor to accomplish a crime carried beyond mere preparation but falling short of execution of the ultimate design, in any part of it. Graham v. People, 181 Ill. 489; Patrick v. People, 132 Ill. 534.

Elements.

The elements are (1) intent to commit a crime; (2) an affirmative act in pursuance of that intent, but falling short of the crime intended. 1 Bish. Crim. Law, § 510. Such act need not be "the last proximate act to the consummation of the crime in contemplation, but it is sufficient if it be an act apparently adapted to produce the result intended. It must be more than mere preparation." 86 Va. 382.

The elements of an attempt to commit a crime are a criminal intent coupled with an overt act apparently adapted to affect that intent. Graham v. People, 181 Ill. 488.

"Intent" Distinguished.

The only distinction between an intent, and an attempt to do a thing, is, that the former implies the purpose only, while the latter implies both the purpose and an actual effort to carry that purpose into execution. Scott v. People, 141 Ill. 203.

What Constitutes.

"If the act fails to accomplish its purpose, it constitutes an attempt, but if the result of it is the consummation of the purpose, the act is not commonly designated as an attempt." Royal Circle v. Achterrath, 204 Ill. 566.

Criminal Code—Implies Purpose to Commit Crime.

The word "attempts," used in section 1 of division 2 of the Criminal Code (J. & A. 3966), fixing the punishment for attempt to commit crime, is used in the sense of "intends" and requires that there be a purpose to commit the crime. Thompson v. People, 96 Ill. 161.

Solicitation to Commit Incest—Not Included.

The word "attempts," used in section 1 of division 2 of the Criminal Code (J. & A. 3966) fixing the punishment for attempts to commit crime, as applied to an attempt incest, requires a physical act as contradistinguished from a verbal declaration, and must be a step taken towards the actual commission of the crime, and does not include a mere effort, by persuasion, to produce the condition of mind essential to the commission of the offense. Cox v. People, 82 Ill. 193.

ATTENDANT TERMS.

Long leases or mortgages so arranged as to protect the title of the owner. Thus, to raise a portion for younger children, it was quite common to make a mortgage to trustees. The powers of these trustees were generally to take possession of the estate, or to sell a part of the term if the portions were not duly paid. If the deed did not become ipso facto void, upon payment of the portion, a release was necessary from the trustees to discharge the mortgage. If this was not given, the term became an outstanding satisfied The purchaser from the heir then term. procured an assignment of the term to

trustees for his benefit, which then became a satisfied term to attend the inheritance, or an attendant term. These terms were held attendant by the courts, also, without any assignment, and operated to defeat intermediate alienations to some extent. There were other ways of creating outstanding terms besides the method by mortgage, but the effect and general operation of all these were essentially the same. 1 Washb. Real. Prop. 311; 4 Kent, Comm. 86-93.

ATTEST.

To verify; to bear witness to. People v. Goss, etc., Co., 99 Ill. 361.

Derivation.

The word "attest" is derived from the Latin words "testis," a witness, and "ad," to. People v. Goss, etc., Co., 99 Ill. 361.

ATTESTATION.

(Lat. ad, to, testari, to witness.) The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as a witness. 3 P. Wms. 254; 2 Ves. Jr. 454; 1 Ves. & B. 362; 3 A. K. Marsh. (Ky.) 146; 17 Pick. (Mass.) 373.

The act of witnessing the actual execution of an instrument and subscribing the name of the witness in testimony of the fact. Calkins v. Calkins, 216 Ill. 462.

What Facts Are Attested.

The act of attestation of a will is not merely to witness the mere fact that the testator signed the will or acknowledged that he had signed the same, but the attention of the witnesses is called, by the act of attestation, to the mental condition of the testator, and as to whether he is possessed of a sound, disposing mind. More v. More, 211 Ill. 272. To the same effect see Gibson v. Nelson, 181 Ill. 128 (where it is held that it is a certificate to the facts required by the statute to make a valid will).

Wills Act.

The attestation required by the Wills Act (J. & A. 11542 et seq.) consists in

the subscription of the names of the witnesses to the attestation clause, as a declaration that the signature was made or acknowledged in their presence. Calkins v. Calkins, 216 Ill. 462; Sloan v. Sloan, 184 Ill. 583; Drury v. Connell, 177 Ill. 47.

ATTESTATION CLAUSE.

That clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same.

Will.

The attestation clause of a will may consist of a simple word, such as "witness," "attest," or "test." Calkins v. Calkins, 216 Ill. 463.

ATTESTED.

Legal Meaning.

The word "attested," when used with reference to judicial writings, or copies thereof, as copies of records or judicial process, seems to have a legal meaning, which is an authentication by the clerk of the court so as to make them receivable in evidence. Goss, etc., Co. v. People, 4 Ill. App. 515.

ATTESTED COPY.

Judgments, Decrees and Executions Act.
An "attested copy," within the meaning of section 53 of the Judgments, Decrees and Executions Act (J. & A. 6800), relating to the seizure of corporate stock on execution, is a copy officially verified to be such. People v. Goss, etc., Co., 99 Ill. 361.

ATTESTING WITNESS.

One who, upon being required by the parties to an instrument, signs his name to it to prove it, and for the purpose of identification. 3 Campb. 232.

ATTORN.

To turn over; to transfer to another money or goods; to assign to some par-

ticular use or service. Kennett, Par. Ant. 283.

In Feudal Law.

Used of a lord's transferring the homage and service of his tenant to a new lord. Bracton, 81, 82; 1 Sullivan, Lect. 227.

In Modern Law.

For the tenant of one to acknowledge or agree that the fee is in another, or that such other is his landlord. 3 A. K. Marsh. (Ky.) 611.

A valid attornment may be made to one in privity with the landlord, as to the vendee on sale of the premises, but an attornment to a stranger is void.

ATTORNEY.

One put in the place, turn, or stead of another, to manage his affairs; one who manages the affairs of another by direction of his principal. Spelman; Termes de la Ley.

Broadest Sense.

A substitute authorized by another to act for him. Baxter v. Venice, 271 Ill. 234.

Attorney at Law.

In England, attorneys at law are divided into barristers or counsel, who are advocates admitted to plead at the bar, and solicitors or attorneys who engage in the drawing of pleadings, preparation of evidence, etc. These latter are called "attorneys" in courts of law, "solicitors" in courts of equity, and "proctors" in admiralty. The distinction between barristers and attorneys or solicitors obtained for a time in some of the United States, but is now obsolete.

When the word "attorney" is used without qualification, it is generally understood to refer to an attorney at law. Baxter v. Venice, 271 Ill. 234.

ATTORNEY GENERAL.

In England.

The law officer of the crown and its only legal representative in the courts.

Hunt v. Chicago & D. Ry. Co., 20 Ill. App. 287.

A great officer, under the king, made by letters patent, whose office is to exhibit informations, and prosecute for the crown in matters criminal; to file bills in the exchequer in any matter concerning the king's revenue. Others may bring bills against the king's attorney. 3 Sharswood, Bl. Comm. 27; Termes de la Ley.

ATTORNEY IN FACT.

An agent formally appointed for some particular business or with general authority to act for another. Baxter v. Venice, 271 Ill. 234.

ATTORNEY'S CERTIFICATE.

In English law. A certificate of the commissioners of stamps that the attorney therein named has paid the annual duty. This must be renewed yearly, and the penalty for practising without such certificate is fifty pounds. St. 37 Geo. III. c. 90, §§ 26, 28, 30. See, also, 7 & 8 Vict. c. 73, §§ 21-26; 16 & 17 Vict. c. 63.

ATTORNMENT.

A continuation of the existing lease upon the same conditions in all respects, simply putting another in the place of the original landlord. Oswald v. Mollet, 29 Ill. App. 453.

Payment of Rent to Assignee.

The act of the tenant in paying rent to an assignee of the lease is an attornment. Hayes v. Lawver, 83 Ill. 183; Oswald v. Mallet, 29 Ill. App. 453.

What Constitutes.

Any act done by a tenant by which he recognizes a change of the person to whom the rent is due is an attornment. Oswald v. Mollet, 29 Ill. App. 453.

ATTRACTIVE NUISANCE.

A machine or other dangerous thing which is especially attractive to children,



who, in obedience to their childish instincts, are likely to be drawn to it, but which is dangerous to them. McDermott v. Burke, 256 Ill. 406.

Artificial Pond.

A pond is not an attractive nuisance though formed artificially, and though boys may be tempted to and do frequently use the pond for bathing. Hanna v. Illinois, etc., R. Co., 129 Ill. App. 137.

Cable and Sheave.

A cable and sheave used to hoist brick and mortar used in building is not an attractive nuisance. McDermott v. Burke, 256 Ill. 407.

Classification.

Attractive nuisances fall into two classes:

First—Where the injury results from some dangerous element a part of, or inseparably connected with, the alluring thing or device, as in the turn-table cases;

Second—Where the attractive device or thing is so located or situated that in yielding to its allurement the child, without such intervention of another element as breaks the relation or cause and effect, is brought directly in contact with danger from some independent source which occasions the injury. Seymour v. Union, etc., Co., 224 Ill. 585.

Coal Wagon.

A coal wagon in active use is not an attractive nuisance. Scott v. Peabody, etc., Co., 153 Ill. App. 107.

AUCTION.

The manner of conducting an auction is immaterial, whether it be by public outcry, or by any other manner. The essential part is the selection of a purchaser from a number of bidders. In a case where a woman continued silent during the whole time of the sale, but whenever any one bid she gave him a glass of brandy, and, when the sale broke up, the person who received the last glass of brandy was taken into a pri-

vate room and he was declared to be the purchaser, this was adjudged to be an auction 1 Dowl. Bailm. 115.

AUDIENCE COURT.

In English law. A court belonging to the archbishop of Canterbury, and held by him in his palace for the transaction of matters of form only, as the confirmation of bishops, elections, consecrations, and the like. This court has the same authority with the court of arches, but is of inferior dignity and antiquity. The dean of the arches is the official auditor of the audience. The archibishop of York has also his audience court. Termes de la Ley.

AUDIT.

To examine, adjust, settle, etc., an account, and then allow it. 3 Denio (N. Y.) 381; 5 Daly (N. Y.) 200; 24 Hun (N. Y.) 419.

AUDITA QUERELA.

(Lat.) A form of action which lies for a defendant to recall or prevent an execution, on account of some matter occurring after judgment amounting to a discharge, and which could not have been, and cannot be, taken advantage of otherwise. 12 Mass. 270.

As Suit.

It is a regular suit, in which the parties appear and plead (17 Johns. [N. Y.] 484; 12 Vt. 56, 435; 30 Vt. 420; 8 Miss. 103), and in which damages may be recovered if execution was issued improperly (Brooks, Abr. "Damages," 38), but the writ must be allowed in open court, and is not of itself a supersedeas (2 Johns. [N. Y.] 227).

The writ of audita querela is a regular suit with its usual incidents, pleadings, issues of laws, and fact, trial, judgment and error. Reid v. O'Brien, 86 Ill. App. 131.

As Remedial Process.

It is a remedial process, equitable in its nature, based upon facts, and not upon

the erroneous judgments or acts of the court. 2 Wm. Saund. 148, note; 10 Mass. 103; 14 Mass. 448; 17 Mass. 159; 1 Aik. (Vt.) 363; 24 Vt. 211; 2 Johns. Cas. (N. Y.) 227; 1 Overt. (Tenn.) 425. And see 7 Gray (Mass.) 206.

In modern practice, the same relief is usually granted on motion, and the writ is dismissed.

Function.

The original purpose of this writ audita querela is said to have been relieving a party from the wrongful acts of his adversary and permitting him to show any matter of discharge which may have occurred since the rendition of the judgment. Reid v. O'Brien, 86 Ill. App. 131.

AUDITOR.

(Lat. audire, to hear.) An officer of the government, whose duty it is to examine the accounts of officers who have received and disbursed public moneys by lawfui authority. Acts Cong. April 3, 1817, and Feb. 24, 1819; 3 Story, U. S. Laws, 1630, 1722; 4 Inst. 107; 46 Geo. III. c. 1.

In Practice.

An officer (or officers) of the court, assigned to state the items of debit and credit between the parties in a suit where accounts are in question, and exhibit the balance. 1 Metc. (Mass.) 218.

They may be appointed by courts either of law or equity. They are appointed at common law in actions of account (Bac. Abr. "Accompt" [F]), and in many of the states in other actions, under statute regulations (6 Pick. [Mass.] 193; 14 N. H. 427; 3 R. I. 60).

Revenue Act-Statutory Definition.

The word "auditor," as used in the Revenue Act, means the auditor of public accounts. Revenue Act 292 (J. & A. 9511).

AUTER ACTION PENDANT.

(Law Fr. another action pending.) In pleading. A plea that another action is

already pending. This plea may be made either at law or in equity. 1 Chit. Pl. 393; Story, Eq. Pl. § 736.

AUTER DROIT.

Another right; in another's right.

AUTHENTIC ACT.

In civil law. An act which has been executed before a notary or other public officer authorize to execute such functions or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register. Nov. 73, c. 2; Code, 7. 52; Id. 6. 4. 21; Dig. 22. 4.

An act which has been executed before a notary public or other officer authorised to execute such functions, in presence of two witnesses, free, male, and aged at least fourteen years; or of three witnesses, if the party be blind. Civ. Code La. art. 2231. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument. Id. art. The authentic act is full proof 2**231**. of the agreement contained in it, against the contracting parties and their heirs or assigns, unless it be declared and proved to be a forgery. Id. art. 2233. See Merlin, Repert.

AUTHORITIES OF ANY TOWN-SHIP.

Statute.

The expression "authorities of any township," used in the act of 1869, authorizing municipalities to lay taxes to pay certain aids, refers to a body of officers that represent the township in its financial or other matters, as a common council represents a city, or a board of trustees represents an incorporated town. Middleport v. Aetna, etc., Co., 82 Ill. 567.

Township Supervisor and Clerk Not Included.

The expression "authorities of any township," used in the act of 1869, authorizing municipalities to lay taxes to

pay certain aids, does not include the town supervisor and town clerk, acting together. Middleport v. Aetna, etc., Co., 82 Ill. 567.

AUTHORIZED.

Punitive Damages — Instruction — Not Equivalent to "Entitled."

An instruction that a jury is "authorized" to give punitive damages is not erroneous as being equivalent to "entitled," such use of the word having never been condemned, although not the best word to use in such connection. Mansur-Tebbetts, etc., Co. v. Smith, 65 Ill. App. 324.

AUTHORIZED OR KNOWINGLY PERMITTED.

Liens Act.

One who agrees with another that such other shall place buildings or other improvements upon certain property has authorized or knowingly permitted the other to improve that property, within the meaning of section 1 of the Liens Act (J. & A. 7139), defining the meaning of the word "contractor." Carey-Lombard, etc., Co. v. Jones, 187 Ill. 209.

AUTOCRACY.

A government where the power of the monarch is unlimited by law.

AUTOMATIC, METALLIC FIRE ESCAPES.

Fire Escape Act of 1897.

The expression "automatic, metallic fire escapes," used in section 1 of the Fire Escape Act of 1897, requires a proper device to be attached to the inside of the buildings described in the act so as to afford an effective means of escape to all occupants who, for any reason, are unable to use the ladders or stairs. Arms v. Ayer, 192 Ill. 611.

AUTOMOBILE.

A lawful means of conveyance. Smith v. Hersh, 161 Ill. App. 85.

AUTONOMY.

The state of independence.

The autonomos was he who lived according to his own laws,---who was free. The term was chiefly used of communities or states, and meant those which were independent of others. It was introduced into the English language by the divines of the seventeenth century, when it and its transaction-self-government-were chiefly used in a theological sense. Gradually its translation received a political meaning, in which it is now employed almost exclusively. late the word "autonomy" has been revived in diplomatic language in Europe, meaning "independence," the negation of a state of political influence from without or foreign powers. See Lieber, Civ. Lib.

AUTOPSY.

Dissection of a dead body for the purpose of ascertaining the cause, seat, or nature of a disease; a post mortem examination.

AUTREFOIS ACQUIT.

Basis of Plea.

The plea of autrefois acquit is based on the principle that a man shall not more than once be placed in jeopardy on the same accusation. Durham v. People, 5 Ill. 173. See "Autrefois Convict."

AUTREFOIS CONVICT.

(Fr. formerly convicted.) In criminal pleading. A plea made by a defendant indicted for a crime or misdemeanor, that he has formerly been tried and convicted of the same. This plea is substantially the same in form as the plea of autrefois acquit, and is grounded on the same principle, viz., that no man's life or liberty shall be twice put in jeopardy for the same offense. 1 Bish. Crim. Law, §§ 651-680; 1 Green (N. J.) 362; 1 McLean (U. S.) 429; 7 Ala. 610; 2 Swan (Tenn.) 493.

A plea of autrefois convict, which

shows that the judgment on the former indictment has been reversed for an error in the judgment, is not a good bar to another indictment for the same offense. 3 Car. & K. 190. But a prior conviction by judgment before a justice of the peace, and a performance of the sentence pursuant to the judgment, constitute a bar to an indictment for the same offense, although the complaint on which the justice proceeded was so defective that his judgment might have been reversed for error. 3 Metc. (Mass.) 328; 8 Metc. (Mass.) 532. See "Jeopardy."

AVAIL OF MARRIAGE.

In Scotch Law.

A certain sum due by the heir of a deceased ward vassal, when the heir became of marriageable age. Ersk. Inst. lib. 2, tit. 5, § 18.

In Feudal Law.

The right of a guardian in chivalry to dispose of the hand of his ward in marriage. 2 Bl. Comm. 88.

AVAILS.

In wills, the net proceeds of the estate; that which remains after paying debts. See 3 N. Y. 276.

AVAL.

In Canadian law. An act of suretyship or guaranty on a promissory note. 1 Low. (U. S.) 221; 9 Low. (U. S.) 360.

AVENGE.

(Law Lat.) In old English law. A certain quality of oats paid to a landlord in lieu of some other duties, or as a rent from the tenant. Cowell. A rent paid in oats.

AVERAGE.

In marine insurance. Loss or damage to a part of the vessel or cargo insured.

The contribution due from one owner to another, on a partial loss.

General Average.

General (also called "gross") average consists of expense purposely incurred, sacrifice made, or damage sustained for the common safety of the vessel, freight, and cargo, or the two of them, at risk, and is to be contributed for by the several interests in the proportion of their respective values exposed to the common danger, and ultimately surviving, including the amount of expense, sacrifice or damage so incurred in the contributory value. 2 Phil. Ins. § 1269 et seq.; and see 2 Curt. C. C. (U. S.) 59; 9 Cush. (Mass.) 415; 93 Ky. 102; 5 Ohio, 307; 3 Wall. (U. S.) 370; 3 Kent, Comm. 232.

Particular Average.

Particular average (also called "partial loss") is an accidental loss on the ship, cargo, or freight, to be borne by the owner of the subject on which it happens, and is so called in distinction from general average, and, if not total, it is also called a partial loss. 2 Phil. Ins. c. 16; 3 Bosw. (N. Y.) 395; 4 B. Mon. (Ky.) 164.

AVERIIS CAPTIS IN WITHERNAM.

In English law. A writ which lies in favor of a man whose cattle have been unlawfully taken by another, and driven out of the county where they were taken, so that they cannot be replevied.

It issues against the wrongdoer to take his cattle for the plaintiff's use. Reg. Brev. 82.

AVERMENT.

In pleading. A positive statement of facts, as opposed to an argumentative or inferential one. Cowp. 683; Bac. Abr. "Pleas" (B).

Averments must contain not only matter, but form.

In old pleading, the conclusion of a plea, whereby the pleader alleged his readiness to verify the foregoing.

Averments were formerly said to be general and particular; but only particlar averments are found in modern pleading. 1 Chit. Pl. 277.

Negative Averments.

Those in which a negative is asserted. Generally, under the rules of pleading, the party asserting the affirmative must prove it; but an averment of illegitimacy (2 Selw. N. P. 709), or criminal neglect of duty must be proven (2 Gall. [U. S.] 498; 19 Johns. [N. Y.] 345; 1 Mass. 54; 10 East, 211; 3 Campb. 10; 3 Bos. & P. 302; 1 Greenl. Ev. § 80; 3 Bouv. Inst. note 3089.)

Immaterial and Impertinent Averments.

Those which need not be made, and, if made, need not be proved. They are synonymous. 5 Dowl. & R. 209. The allegation of deceit in the seller of goods in action on the warranty is such an averment (2 East, 446; 17 Johns. [N. Y.] 92).

Unnecessary Averments.

Statements of matters which need not be alleged, but which, if alleged, must be proved. Carth. 200.

AVERUM.

(Lat.) Goods; property; a beast of burden. Spelman.

AVET.

In Scotch law. To abet or assist. Tomlin.

AVIZANDUM.

In Scotch law. To make avizandum with a process is to take it from the public court to the private consideration of the judge. Bell, Dict.

AVOIDANCE.

A making void, useless, or empty.

In Ecclesiastical Law.

It exists when a benefice becomes vacant for want of an incumbent.

In Pleading.

Repelling or excluding the conclusions or implications arising from the admis-

sion of the truth of the allegations of the opposite party.

AVOIRDUPOIS.

The name of a weight. This kind of weight is so named, in distinction from the Troy weight. One pound avoirdupois contains seven thousand grains Troy; that is, fourteen ounces, eleven pennyweights and sixteen grains Troy; a pound avoirdupois contains sixteen ounces; and an ounce, sixteen drachms. Thirty-two cubic feet of pure spring water, at the temperature of fifty-six degrees of Fahrenheit's thermometer, make a ton of two thousand pounds avoirdupois, or two thousand two hundred and forty pounds net weight. Dane, Abr. c, 211, art. 12, The avoirdupois ounce is less than the Troy ounce in the proportion of 72 to 79, though the pound is greater. Enc. Amer. "Avoirdupois." For the derivation of this phrase, see Barr. Obs. St. 206. See the Report of Secretary of State of the United States to the Senate, February 22, 1821, pp. 44, 72, 76, 79, 81, 87, for a learned exposition of the whole subject.

AVOW.

To acknowledge the commission of an act, and claim that it was done with right.
3 Bl. Comm. 150.

To make an avowry. For example, when replevin is brought for a thing distrained, and the party taking claims that he had a right to make the distress, he is said to avow. See Fleta, lib. 1, c. 4, § 4; Cunningham.

AVOWANT.

One who makes an avowry.

AVOWRY.

In pleading. The answer of the defendant in an action of replevin brought to recover property taken in distress, in which he acknowledges the taking, and setting forth the cause thereof, claims a right in himself or his wife to do so.

4 Bouv. Inst. note 3571; 3 Bl. Comm.

A justification is made where the defendant shows that the plaintiff had no property, by showing either that it was the defendant's or some third person's, or where he shows that he took it by a right which was sufficient at the time of taking, though not subsisting at the time of answer. The avowry admits the property to have been the plaintiff's, and shows a right which had then accrued, and still subsists, to make such caption. See Gilb. Distr. 176-178; 2 W. Jones, 25.

AVULSION.

What Constitutes.

(Lat. avellere, to tear away.) The removal of a considerable quantity of soil from the land of one man, and its deposit upon or annexation to the land of another, suddenly and by the perceptible action of water. 2 Washb. Real Prop. 452. In such case, the property belongs to the first owner. Bracton, 221; Hargrave, Tract. de Jure Mar.; Schultes, Aq. Rights, 115-138. The perceptible character of the deposit distinguishes it from accretion (q. v.). See also, "Reliction."

"Where considerable quantities of soil are, by a sudden action of the water, taken from the land of one, this is called avulsion." Chicago v. Ward, 169 Ill. 408,

AWARD.

(Law Lat. awarda, awardum; old French, agarda, from a garder.) keep, preserve; to be guarded, or kept. So called because it is imposed on the parties to be observed or kept by them. Spelman.

The judgment or decision of arbitrators or referees on a matter submitted to them.

The writing containing such judgment. Cowell; Termes de la Ley; 3 Bouv. Inst. note 2402.

The judgment or decision of arbitrators or referees on matters submitted to them to be decided, whereby a duty is imposed, One of the cases in which an offender

to be performed by one or more of the parties who have so submitted such matters to such arbitrators or referees. Tompkins v. Gerry, 52 Ill. App. 596. To the same effect see McMillan v. James. 105 Ill. 200; Henrickson v. Reinback, 33 Ill. 302.

Requisites.

An award is nothing more than an agreement made for parties which they could not make themselves, and it must be mutual, a concurrence in results—a meeting of the minds. Stone v. Atwood, 28 Ill. 41.

AYANT CAUSE.

In French law. This term, which is used in Louisiana, signifies one to whom a right has been assigned, either by will. gift, sale, exchange, or the like; an assignee. An ayant cause differs from an heir who acquires the right by inheritance. 8 Toullier, Dr. Civ. note 245.

B. F.

Bonum factum, a good deed. A form of approval among the civilians.

BABBITT METAL.

An alloy of copper, tin and zinc. Spies v. People, 122 Ill. 109.

BACK BOND.

A bond of indemnification given to a surety.

In Scotch Law.

A declaration of trust; a defeasance; a bond given by one who is apparently absolute owner, so as to reduce his right to that of a trustee or holder of a bond and disposition in security. Paterson. Comp.

BACKBEAR.

In forest law. Carrying on the back.

against vert and venison might be arrested, as being taken with the mainour, or manner, or found carrying a deer off on his back. Manw. For. Law; Cowell.

BACKSIDE.

A yard at the back part of or behind a house, and belonging thereto.

The term was formerly much used both in conveyances and in pleading, but is now of infrequent occurrence, except in conveyances which repeat an ancient description. Chit. Prac. 177; 2 Ld. Raym. 1399.

BACULUS.

(Lat.) In old English practice. staff, rod, or wand, anciently used in the ceremony of making livery of seisin. where there was no building on the land. Fiat seysina per fustim et per baculum, seisin should be made by rod and staff. Bracton, fol. 40; Fleta, lib. 3, c. 15, § 5. Baculus nuntiatorius, a warning or summoning stick. A white stick or wand, by erecting which on the grounds of a defendant in real actions he was anciently warned or summoned to appear in court at the return of the original writ. 8 Bl. Comm. 379.

A baton, such as combatants fought with in the duellum. Frangitur eorum baculus, their baton is broken.

A term anciently applied to persons convicted of a felony on their own confession, signifying that they could not bring an appeal against any one. Bracton, fol. 152. See Fleta, lib. 1, c. 38, § 16; 2 Reeve, Hist. Eng. Law, 43.

BAD.

Not sufficient in law. International Bank v. Jenkins, 104 Ill. 148.

BAD BEHAVIOR.

Behavior which the law punishes. U. 8. v. Hrasky, 240 Ill. 564.

BAD FAITH.

Implies Breach of Faith.

The words "bad faith" imply a breach

plain and well understood obligation, and mean not only the existence of an honorable obligation, but a dishonorable refusai or neglect to comply with the same; they imply much more than mere inability to respond. Nelson v. Board of Trade, 58 Ill. App. 415.

BADGE OF FRAUD.

A circumstance attending a transaction tending to throw upon it suspicion of fraud, though not in itself consisting 64 N. C. 374. fraud.

An act which, from the common experience of mankind, is regarded as ground of suspicion.

BADGER.

(Fr.) Baggage, a bundle, and thence is derived bagagier, a carrier of goods.

One who buys corn or victuals in one place, and carries them to another to sell and make profit by them. And such a one is exempted in St. 5 & 6 Edw. VI. c. 14, from the punishment of an ingrosser within that statute. But by 5 Eliz. c. 12, badgers are to be licensed by the justices of the peace in the sessions, whose licenses will be in form for one year, and no longer, and the persons to whom granted must enter into a recognizance that they will not, by color of their licenses, forestall, or do anything contrary to the statutes made against forestallers, ingrossers, and regrators. If any person shall act as a badger without license, he is to forfeit £5, one moiety to the king, and the other to the prosecutor, leviable by warrant from justices of the peace, etc. Jacob.

BAFFLING TILE.

Something used in boilers to check and direct the course of the heat currents. McKenzie, etc., Co. v. Mallers, 231 Ill. 565.

BAGGAGE.

Defined.

Whatever, connected with the objects of faith, a willful failure to respond to a | of the journey, and not exceeding the limits of reason and custom, a traveler takes with him for his personal use, whether during actual travel, or in intervals between trips, or upon the termination of the journey. Bish. Non-Cont. Law, § 1156.

Liability of Carrier.

The term "baggage," as used in defining the liability of a common carrier for the effects of a passenger, comprises only such apparel and other articles necessary for a passenger's personal use and comfort, instruction, amusement or protection, while away from home, having regard to the habits and condition in life of the passenger, and to the length and object of the journey. Michigan C. R. Co. v. Carrow, 73 Ill. 352; Chicago, R. I. & P. R. Co. v. Collins, 56 Ill. 217; Cincinnati & C. A. L. R. Co. v. Marcus, 38 Ill. 223; Parmelee v. Fischer, 22 Ill. 213; Woods v. Devin, 13 Ill. 750; Wingate v. Pere Marquette R. Co., 172 Ill. App. 317; Levensohn v. Cunard, etc., Co., 162 Ill. App. 424; Atwood v. Mohler, 108 Ill. App. 419; Werner v. Evans, 94 Ill. App. 330.

The term "baggage," as used to define the liability of a common carrier, does not comprise merchandise or articles of commerce. Cincinnati, etc., R. Co. v. Marcus, 38 Ill. 223.

What Does Not Include.

It does not include samples of merchandise (98 Mass. 83), money not necessary for traveling (22 III. 278), jewelry intended for presents (17 N. Y. Super. Ct. 225).

A sacque and muff, and silver napkin rings, can not be said to constitute any part of a gentleman's traveling baggage. Chicago, R. I. & P. R. Co. v. Boyce, 73 Ill. 512.

Traveling Expenses.

A sufficient sum of money to defray traveling expenses is included within the meaning of the term "baggage." Michigan C. R. Co. v. Boyce, 73 Ill. 512; Woods v. Devin, 13 Ill. 750; Wingate v. Pere Marquette R. Co., 172 Ill. App. 317.

Household Articles.

It includes bedding for use on the trip (1 Whit. & W. Civ. Cas. Ct. App. [Tex.] § 1253).

Among the articles contained in a chest delivered to a carrier by a passenger and held to be within the definition of "baggage," were feather beds, pillows, coverlets, blankets, an oil cloth table cover, a silver teapot, a gun, dishes, spoons, and a serving box. Parmelee v. Fischer, 22 Ill. 213.

Revolver.

A revolver has been held to be "baggage." Davis v. Michigan S. & N. I. R. Co., 22 Ill. 281.

Pistols.

A pocket pistol and two dueling pistols have been held to be "baggage." Woods v. Devin, 13 Ill. 751.

What Included.

It includes books (121 Ind. 226), tools (14 Pa. St. 129), opera glasses (33 Ind. 379).

BAIL.

(Fr. bailler, to deliver.) Those persons who become sureties for the appearance of the defendant in court.

The delivery of the defendant to persons who, in the manner prescribed by law, become security for his appearance in court.

The word is used both as a substantive and a verb, though more frequently as a substantive, and in civil cases, at least, in the first sense given above. In its more ancient signification, the word includes the delivery of property, real or personal, by one person to another.

Blackstone's Definition.

A delivery or bailment of a person to his sureties upon their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to jail. People v. Barrett, 202 Ill. 298.

Bail Above.

Sureties who bind themselves either to satisfy the plaintiff his debt and costs, or to surrender the defendant into custody, provided judgment be against him in the action, and he fail to do so. Sellon, Prac. 137.

Bail Below.

Sureties who bind themselves to the sheriff to secure the defendant's appearance, or his putting in bail to the action on the return day of the writ. It may be demanded by the sheriff whenever he has arrested a defendant on a bailable process, as a prerequisite to releasing the defendant.

Common Bail.

Fictitious sureties formally entered in the proper office of the court. It is a kind of bail above, similar in form to special bail, but having fictitious persons, John Doe and Richard Roe, as sureties. Filing common bail is tantamount to entering an appearance.

In Canadian Law.

A lease. See Merlin, Repert. "Bail." Bail emphyteotique, a lease for years, with a right to prolong indefinitely. 5 Low. (U. S.) 381. It is equivalent to an alienation. 6 Low. (U. S.) 58.

BAIL BOND.

A specialty by which the defendant and other persons become bound to the sheriff in a penal sum proportioned to the damages claimed in the action, and which is conditioned for the due appearance of such defendant to answer to the legal process therein described, and by which the sheriff has been commanded to arrest him. Cochran v. People, 140 Ill. App. 598.

BAILEE.

Public Officer Having Custody of Public Funds.

A public officer having custody of public funds is not a bailee in the sense of having possession for a temporary purpose with a qualified property. Lake County v. Westerfield, 273 Ill. 128.

Criminal Code.

The word "bailee," as used in section 170 of the Criminal Code (J. & A. ¶ 3799), relating to larceny, includes one to whom jewelry is entrusted for exhibition to other parties whom he represents as desirous of joining with him in selecting and purchasing, although the owner before entrusting him with the jewelry required a written guaranty of payment for whatever jewelry might be bought. Bergman v. People, 177 Ill. 246.

BAILIFF.

A person to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or intrusted. Spelman.

A sheriff's officer or deputy. 1 Bl. Comm. 344.

A magistrate, who formerly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton.

There are still bailiffs of particular towns in England; as, the bailiff of Dover Castle, etc.; otherwise, bailiffs are now only officers or stewards, etc.; as, bailiffs of liberties, appointed by every lord within his liberty, to serve writs, etc.; bailiffs errant or itinerant, appointed to go about the country for the same purpose; sheriff's bailiffs, sheriff's officers to execute writs; these are also called "bound bailiffs," because they are usually bound in a bond to the sheriff for the due execution of their office; bailiffs of court baron, to summon the court, etc.; bailiffs of husbandry, appointed by private persons to collect their rents and manage their estates; water bailiffs, officers in port towns for searching ships, gathering tolls, etc. Bac. Abr.

In Account Render.

A person who has by delivery the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof. Co. Litt. 271; 2 Leon. 245; Story, Eq. Jur. § 446.

BAILIFFS OF FRANCHISES.

In English law. Officers who perform the duties of sheriffs within liberties or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff. Spelman, voc. "Balivus."

BAILIFFS OF HUNDREDS.

In English law. Officers appointed over hundreds, by the sheriffs to collect fines therein, and summon juries; to attend the judges and justices at the assizes and quarter sessions; and also to execute writs and process in the several hundreds. 1 Bl. Comm. 345; 3 Steph. Comm. 29; Bracton, fol. 116.

BAILIFFS OF MANORS.

In English law. Stewards or agents appointed by the lord (generally by an authority under seal) to superintend the manor, collect fines and quitrents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils, and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest. Cowell; Fleta, lib. 2, cc. 72, 73.

BAILIWICK.

The jurisdiction of a sheriff or bailiff.

1 Bl. Comm. 344.

A liberty or exclusive jurisdiction which was exempted from the sheriff of the county, and over which the lord appointed a bailiff, with such powers within his precinct as the under sheriff exercised under the sheriff of the county. Wishaw.

BAILMENT.

Defined.

(Fr. bailler, to put into the hands of; to deliver.) A delivery of something of a personal nature by one party to another, to be held according to the purpose or object of the delivery, and to be returned or delivered over when that purpose is accomplished. Prof. Joel Parker, MSS. Lect. Dane Law School, Harvard Coll. 1851.

The right to hold may terminate, and a duty of restoration may arise, before the accomplishment of the purpose, but that does not necessarily enter into the definition, because such duty of restoration was not the original purpose of the delivery, but arises upon a subsequent contingency. The party delivering the thing is called the "bailor;" the party receiving it, the "bailee." It is distinguished from a sale by the fact that in a bailment only the right of possession, and not the title, is transferred. Benj. Sales, §§ 1, 2.

Various attempts have been made to give a precise definition of this term, upon some of which there have been elaborate criticisms. See Story, Bailm. (4th Ed.) § 2, note 1, exemplifying the maxim, Omnis definitio in lege periculosa est.

Some of these definitions are here given as illustrating more completely than is possible in any other way the elements considered necessary to a bailment by the different authors cited.

A delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story, Bailm. § 2. See Merlin, Repert. "Bail."

A delivery of goods in trust upon a contract, either expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Comm. 451. See Id. 395.

A delivery of goods in trust upon a contract, expressed or implied, that the trust shall be duly executed, and the goods restored by the bailee as soon as the purposes of the bailment shall be answered. 2 Kent, Comm. 559.

A delivery of goods on a condition, express or implied, that they shall be restored by the ballee to the bailor, or according to his directions, as soon as the purpose for which they are bailed shall be answered. Jones, Bailm. 1.

A delivery of goods in trust on a contract, either expressed or implied, that

the trust shall be duly executed, and the goods redelivered as soon as the time or use for which they were bailed shall have elapsed or be performed. Jones, Bailm. 117.

According to Story, the contract does not necessarily imply an undertaking to redeliver the goods; and the first definition of Jones here given would seem to allow of a similar conclusion. On the other hand, Blackstone, although his definition does not include the return, speaks of it in all his examples of bailments as a duty of the bailee; and Kent says that the application of the term to cases in which no return or delivery or redelivery to the owner or his agent is contemplated, is extending the definition of the term beyond its ordinary acceptation in the English law. A consignment to a factor would be a bailment for sale, according to Story, while according to Kent it would not be included under the term "bailment."

Jones' Divisions.

Sir William Jones has divided bailments into five sorts, namely, depositum, or deposit; mandatum, or commission without recompense; commodatum, or loan for use without pay; pignori acceptum, or pawn; locatum, or hiring, which is always with reward. This last is subdivided into locatio rei, or hiring, by which the hirer gains a temporary use of the thing; locatio operis faciendi, when something is to be done to the thing delivered; locatio operis mercium vehendarum, when the thing is merely to be carried from one place to another. Jones, Bailm. 36.

Lord Holt's Divisions.

Lord Holt divides them into six classes: Depositum, or deposit for keeping for the benefit of the bailor; commodatum, or gratuitous loan; locatio rei, or letting for hire; vadium, pledge or pawn; locatio operis faciendi, or delivery that something may be done upon the chattels by the bailee for hire; mandatum, or mandate, a delivery that something may be done upon the chattels by the bailee gratuitously. 2 Ld. Raym. 909.

Schouler's Divisions.

A better general division, however, for practical purposes, suggested, but not adopted, by Story (Bailm. §§ 4-8), and first adopted by Schouler (Bailm. § 14), is into three kinds: First, those bailments which are for the benefit of the bailor, or for some person whom he represents; second, those for the benefit of the bailee, or some person represented by him; third, those which are for the benefit of both parties.

Essentials.

One essential of a bailment is the acceptance of the subject matter, and taking property into possession or control is such an acceptance. Smith v. Eichelberger, 175 Ill. App. 238.

The delivery of goods for some purpose, under a contract, express or implied, that after the purpose has been fulfilled they shall be redelivered to the bailor, or otherwise dealt with according to his directions, or kept till he reclaims them. Knapp, etc., Co. v. McCaffrey, 178 Ill. 112 (affirming 74 Ill. App. 85).

Loan.

A loan is a bailment. Smith v. Eichelberger, 175 Ill. App. 238.

"Sale" Compared.

When the identical thing delivered is to be restored in the same or an altered form, the contract is one of bailment, but when the receiver is at liberty to return another thing of equal value, or the money value, it is a sale. Wetherell v. O'Brien, 140 Ill. 150; Chickering v. Bastress, 130 Ill. 215; Richardson v. Olmstead, 74 Ill. 215; Lonergan v. Stewart, 55 Ill. 49; McCurrie v. Hines, etc., Co., 178 Ill. App. 619; Singer, etc., Co. v. Ellington, 103 Ill. App. 521; Bastress v. Chickering, 18 Ill. App. 207.

Carriage of Goods by Water.

The carriage of goods by water is a bailment. Knapp v. McCaffrey, 178 Ill. 112 (affirming 74 Ill. App. 85).

Blackstone's Definition.

A delivery of goods in trust, upon a contract expressed or implied, that the

trust shall be faithfully executed on the part of the bailee. Taylor v. Turner, 87 Ill. 303.

BAILMENT FOR HIRE.

A bailment where the bailee is hired by the bailor to bestow labor or perform service upon the thing bailed. Standard, etc., v. Bemis, etc., Co., 171 Ill. 606.

BAIRNS.

In Scotch law. A known term, used to denote one's whole issue. Ersk. Inst. 3. 8. 48. But it is sometimes used in a more limited sense. Bell, Dict.

BAKERY.

As any place used for the purposes of mixing, compounding or baking, for sale or for purposes of a restaurant, bakery or hotel, any bread, biscuit, pretzels, crackers, buns, rolls, macaroni, cake, pies, or any food product of which flour or meal is a principal ingredient, etc. Chicago v. Drogasawacz, 256 Ill. 35.

BALANCE.

The amount which remains due by one of two persons, who have been dealing together, to the other, after the settlement of their accounts.

Account and Balance of Account Distinguished.

"There is a broad distinction between an account and the mere balance of an account, resembling the distinction in logic between the premises of an argument and the conclusions drawn therefrom. A balance is but the conclusion or result of the debit and credit sides of an account. It implies mutual dealings and the existence of debit and credit, without which there could be no balance." 45 Mo. 573.

Will-"Residue" Synonymous.

A will devising the "balance" of testator's estate uses the word "balance" as synonymous with "residue." Brooks v. Brooks, 65 Ill. App. 331.

BALLAST.

Heavy substance carried in the hold of a ship to trim her, and bring her to a safe and proper draft. It differs from "dunnage" (q. v.). 13 Wall. (U. S.) 674.

BALLASTAGE.

A toll paid for the privilege of taking up ballast from the bottom of the port. This arises from the property in the soil. 2 Chit. Com. Law, 16.

BALLOT.

A paper bearing the names of candidates for designated offices, and delivered by electors to the election officers in expressing their choice for such offices. It is usually printed, and is in various prescribed forms, especially in states which have adopted the Australian ballot system, or modifications of it.

Ballot or ticket used in voting; a little ball used in giving votes; a piece of paper, or other suitable material, with the name written upon it of the person to be voted for. Lynch v. Malley, 215 Ill. 578.

Constitution of 1870—Includes Vote on Voting Machine.

The word "ballot," as used in section 2 of article 7 of the Constitution of 1870, relating to suffrage, includes a vote registered on a voting machine, and is not restricted to a written or printed ballot. Lynch v. Malley, 215 Ill. 582.

Original Meaning.

Originally a ballot consisted of a little ball, a bean or a grain of corn, a coin, or any other small article which could be concealed in the hand so that others might not know how the voter cast his ballot, but later a slip or piece of paper was substituted for the ballot, on which was printed or written the name of the candidates to be voted for. Lynch v. Malley, 215 Ill. 579.

BANAL, OR BANNAL.

(Fr.) In old French and Canadian law. Having qualities derived from a ban or privileged space; privileged. A banal mill is one to which the seignior or lord may require his tenant to carry his grain to be ground. Dunkin's Address, 89.

BANALITY.

In Canadian law. The right by virtue of which a lord subjects his vassals to grind at his mill, bake at his oven, etc. Used also of the region within which this right applied. Guyot, Rep. Univ. It prevents the erection of a mill within the seignorial limits (1 Low. [U. S.] 31), whether steam or water (3 Low. [U. S.] 1).

BANC.

(Fr. bench.) The seat of judgment; as, banc le roy, the king's bench; banc le common pleas, the bench of common pleas; the full bench.

BANCUS.

(Lat.) A bench; the seat or bench of justice; a stall or table on which goods are exposed for sale. Often used for the court itself.

A full bench, when all the judges are present. Cowell; Spelman.

The English court of common pleas was formerly called "bancus." Viner, Abr. "Courts."

BANISHMENT.

A punishment inflicted upon criminals, by compelling them to quit a city, place, or country for a specified period of time, or for life. See 4 Dall. (Pa.) 14. It is to be distinguished from "transportation," which implies a confinement in some place beyond the realm.

BANK.

(Anglicised form of bancus, a bench.)
The bench of justice.

A session in bank is one held by more than one judge of the court to determine matters of law.

Distinguished from nisi prius sittings to determine facts. 3 Sharswood, Bl. Comm. 28, note.

Bank le roy, the king's bench. Finch, Law, 198.

A place for the deposit of money; an institution (generally incorporated) authorized to receive deposits of money, to lend money and issue promissory notes (usually known by the name of banknotes), or to perform some one or more of these functions. Reed v. People, 125 Ill. 596.

In Commercial Law.

Banks are said to be of three kinds, viz., of deposit, of discount, and of circulation, Reed v. People, 125 Ill. 597. They generally perform all these operations, but an institution performing but one is a bank. 17 Wall. (U. S.) 118; but see 52 Cal. 196. A corporation loaning its own funds on note and mortgage is not a bank. 5 Sawy. (U. S.) 32.

It was the custom of the early money changers to transact their business in public places, at the doors of churches, at markets, and, among the Jews, in the temple (Mark xi. 15.) They used tables or benches for their convenience in counting and assorting their coins. The table so used was called banche, and the traders themselves, "bankers," or "benchers." In times still more ancient, their benches were called cambii, and they themselves were called cambiators. Du Cange, "Cambii."

Stream-Boundary.

A grant bounding land by the bank of a stream necessarily excludes the stream and its privilege. Rockwell v. Baldwin, 53 Ill. 22.

The banks of a stream are the elevations of land which confine the waters in their natural channel, when they rise the highest and do not overflow the banks. People v. Board of Supervisors, 125 Ill. 26.

The banks of a fresh water river signify the earth rising on each side of

the water. Peoria v. Central, etc., Bank, 224 Ill. 53.

"Shore" Compared.

The old distinction between "shore" and "bank" as found in tide waters has not been preserved when applied to fresh water, and they are frequently used interchangeably in that connection. Peoria v. Central, etc., Bank, 224 Ill. 55.

Low Water Mark Not Included.

Low water mark is not the bank of a stream. People v. Board of Supervisors, 125 Ill. 26.

Land Bordering Tide Water.

The banks of land bordering tide water are those portions of the land beginning at high tide and rising to the point where the characteristic formation of the basin holding the water ceases. Peoria v. Central, etc., Bank, 224 Ill. 53.

As Applied to Land.

Any steep accelvity; as one rising from a river, a lake or the sea. Peoria v. Central, etc., Bank, 224 Ill. 55.

BANK BILL.

A written promise on the part of the bank to pay the bearer a certain sum of money, on demand. Townsend v. People, 4 Ill. 328.

BANK CHECKS.

As Inland Bills.

Bank checks are substantially inland bills of exchange. Robertson v. Flower, 136 Ill. App. 321; Rounds v. Smith, 42 Ill. 255; Bickford v. First, etc., Bank, 42 Ill. 242.

BANK NOTE.

A promissory note, payable on demand to the bearer, and intended to circulate as money, made and issued by a person or persons acting as bankers, and authorized by law to issue such notes.

BANKER.

A dealer in capital,—an intermediate party between the borrower and the lender,—who borrows of one party and lends to another; and the business of banking is, among other things, the establishing of a common fund for lending money. Meadowcroft v. People, 163 Ill. 65.

Stipulation—"Money Changer" Included.

A stipulation that a party is a "banker" is to be construed as meaning that such person transacts the business ordinarily done at private banking houses in this state, and includes all the business of a money changer. Hinckley v. Belleville, 43 Ill. 184.

BANKER'S NOTE.

A promissory note given by a private banker or banking institution not incorporate, but resembling a bank note in all other respects. 6 Mod. 29; 3 Chit. Com. Law, 590; 1 Leigh, N. P. 338.

BANKER'S REIMBURSEMENT.

Contract-Implies Discount.

A contract providing that goods sold shall be paid for by draft against "banker's reimbursement," means, by the quoted expression, a banker's guaranty or discount of the draft which should be drawn by the seller upon the buyer for the price of the goods sold. Memory v. Niepert, 131 Ill. 633.

BANKING.

Bond.

The condition of a bond that the obligor would not engage in the "banking" business at a place named is not broken by having a deposit in a Chicago bank, and drawing checks thereon in payment of obligations, and buying checks or exchange from other banks or persons to replenish the deposit fund. Scott v. Burnham, 56 Ill. App. 30.

The business or employment of a banker; the business of establishing a

common fund for lending money, discounting notes, issuing bills, receiving deposits, etc. Ford v. Hine, etc., Co., 115 Ill. App. 153.

Buying Bankrupt Assets Included.

A statute of New Jersey providing that no person or corporation should engage in the business of "banking" except as provided in the statute is not violated by a New Jersey corporation which engages in the business of buying the assets of bankrupt or insolvent corporations, such business being not within the meaning of the quoted term. Clark v. Assets, etc., Co., 115 Ill. App. 153.

Discounting As.

In order to bring discounting within the proper definition of a banking function, it must be done with money, in part, at least, that of other persons, instructed or deposited with the discounter, so that he has the practical use and control of it as fully as if it were his own. Clark v. Assets, etc., Co., 115 Ill. App. 153.

BANKING POWERS.

Constitution of 1870.

The expression "banking powers," used in section 5 of article 11 of the Constitution of 1870, is used in the common, ordinary sense of the words used, and means the ordinary and usual powers conferred on banks and banker. Reed v. People, 125 Ill. 596.

Constitution of 1848—Refers to Banks of

The expression "banking powers," used in section 4 of article 10 of the Constitution of 1848, refers to banks of issue. People v. Loewenthal, 93 Iil. 197.

BANKRUPT.

A person against whom an involuntary petition or an application to set a composition aside has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt. U. S. Bankrupt Act 1898, § 1. Loosely used for insolvent.

BANS OF MATRIMONY.

Public notice or proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract, to the end that persons objecting to the same may have an opportunity to declare such objections before the marriage is solemnized. Poth. du Mariage, p. 2, c. 2.

BAR.

(1) A particular part of the court room. As thus applied, and secondarily in various ways, it takes its name from the actual bar, or inclosing rail, which originally divided the bench from the rest of the room, as well as from that bar, or rail, which then divided, and now divides, the space including the bench, and the place which lawyers occupy in attending on and conducting trials, from the body of the court room. Those who, as advocates or counsellors, appeared as speakers in court, were said to be "called to the bar," that is, called to appear in presence of the court, as barristers, or persons who stay or attend at the bar of court. Rich. Dict. "Barrister." By a natural transition, a secondary use of the word was applied to the persons who were so called, and the advocates were, as a class, called "the bar." And in this country, since attorneys, as well as counsellors, appear in court to conduct causes, the members of the legal profession, generally, are called the "bar."

(2) The court, in its strictest sense, sitting in full term.

Thus, a civil case of great consequence was not left to be tried at nisi prius, but was tried at the "bar of the court itself," at Westminster. 3 Bl. Comm. 352. So a criminal trial for a capital offense was had "at bar" (4 Bl. Comm. 351), and in this sense the term "at bar" is still used. It is also used in this sense, with a shade of difference (as not distinguishing nisi prius from full term, but as applied to any term of the court), when a person indicted for crime is called "the prisoner at the bar," or is said to stand at the bar to plead to the indictment. See Merlin,

Repert, "Barreau;" 1 Dupin, Prof. d'Av. 451.

- (3) An obstacle or opposition. Thus relationship within the prohibited degrees, or the fact that a person is already married, is a bar to marriage.
- (4) A perpetual destruction of the action of the plaintiff. 1 Ore. 47.
- (5) Bar in the old books is sometimes used for "plea in bar." Co. Litt. 303b.

BARGAIN.

An agreement between parties concerning the sale of property; or a contract, by which one party binds himself to transfer the right to some property for a consideration, and the other party binds himself to receive the property and pay the consideration; an agreement or stipulation of any kind. Koenig v. Dohm, 209 Ill. 477.

BARGAIN AND SALE.

A contract or bargain by the owner of land, in consideration of money or its equivalent paid, to sell land to another person, callet the "bargainee," whereupon a use arises in favor of the latter, to whom the seisin is transferred by force of the statute of uses. 2 Washb. Real Prop. 128.

A real contract, whereby a person bargains and sells his lands to another for a pecuniary consideration, in consequence of which a use arises to the bargainee, and by the statute of uses the legal estate and actual possessions are immediately transferred to the cestui que use without any entry or other act on his part, thus dispensing with livery of seisin. Devl. Deeds, § 23.

BARGAINED AND SOLD.

Importing Sale.

The words "bargained and sold," have a settled legal meaning and import a sale, which vests the property in the buyer. Barrow v. Window, 71 Ill. 217; Seckel v. Scott, 66 Ill. 110.

BARO.

A man, whether slave or free.

Si quis homicidium perpetraverit in barone libro seu servo, if any one shall have perpetrated a murder upon any man, slave or free. A freeman or freedman; a strong man; a hired soldier; a vassal; a feudal client.

Those who held of the king immediately were called "barons of the king."

tely were called "barons of the king."

A man of dignity and rank; a knight.

A magnate in the church.

A judge in the exchequer (baro scaccarii).

The first-born child.

A husband.

The word is said by Spelman to have been used more frequently in its latter sense.

It is quite easy to trace the history of baro, from meaning simply "man," to its various derived significations. Denoting a man, one who possessed the many qualities of courage and strength would be desirable as a soldier, or might misuse them as a robber. One who possessed them in an eminent degree would be "the" man; and hence baro, in its sense of a title of dignity or honor, particularly applicable in a warlike age to the best soldier. See. generally, Bac. Abr.: Comyn, Dig.; Spelman.

BARON.

A general title of nobility (1 Bl. Comm. 398); a particular title of nobility, next to that of viscount; a judge of the exchequer (Cowell; 1 Bl. Comm. 44).

A husband. In this sense it occurs in the phrase baron et feme, husband and wife (1 Bl. Comm. 432), and this is the only sense in which it is used in the American law, and even in this sense it is now but seldom found.

A freeman. Especially applied to the inhabitants of the Cinque Ports,—Romney Sandwich, Hastings, Rotherhithe, and Dover, and the two laterly constituted ports of Winchelsea and Rye.

It has essentially the same meaning as baro (q. v.)

BARONET.

An English title of dignity. It is an hereditary dignity, descensible, but not a title of nobility. It is of very early use. Spelman; 1 Bl. Comm. 403.

BARRATRY.

(Fr. barat, baraterie, robbery, deceit, fraud.)

— In Criminal Law.

Common barratry is the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bl. Comm. 134; Co. Litt. 368. Sometimes called "barretry."

An attorney is not liable to indictment for maintaining another in a groundless action. 1 Bailey (S. C.) 379. See 1 Bish. Crim. Law, §§ 401, 645, 646; 2 Bish. Crim. Law, §§ 57-61; Bac. Abr.; 8 Coke, 36b; 9 Cow. (N. Y.) 587; 15 Mass. 229; 11 Pick. (Mass.) 432; 13 Pick. (Mass.) 362.

- In Maritime Law and Insurance.

An unlawful or fraudulent act, or very gross and culpable negligence, of the master or mariners of a vessel, in violation of their duty as such, and directly prejudicial to the owner, and without his consent. 1 Phil. Ins. c. 13; Abb. Shipp, 167, note; 2 Caines (N. Y.) 67, 222; 3 Caines (N. Y.) 1; 1 Johns. (N. Y.) 229; 11 Johns. (N. Y.) 40; 13 Johns. (N. Y.) 451; 2 Bin. (Pa.) 274; 8 Cranch (U. S.) 139; 5 Day (Conn.) 1; 3 Wheat. (U. S.) 163; 4 Dall. (U. S.) 294.

- In Scotch Law.

The crime of a judge who receives a bribe for his judgment. Skene de Verb. Sign.

BARRISTER.

In English law. A counsellor admitted to plead at the bar.

- Inner Barrister.

A serjeant or king's counsel who pleads within the bar.

- Vacation Barrister.

A counsellor newly called to the bar, who is to attend for several long vacations the exercise of the house.

Barristers are called apprentices, apprentitii ad legem, being looked upon as learners, and not qualified until they obtain the degree of serjeant. Edmund Plowden, the author of the Commentaries, a volume of elaborate reports in the reigns of Edward VI., Mary, Philip and Mary, and Elizabeth, describes himself as an apprentice of the common law.

BARTER.

Dramshops Act.

The word "barter," used in section 12 of the act of 1907 (J. & A. \P 4648), is used in its ordinary sense. People v. Young, 237 Ill. 202.

BASE OR DETERMINABLE FEE.

- Defined.

A fee which has a qualification annexed to it, and which must be determined whenever the annexed qualification requires.

A grant to A. and his heirs, tenants of Dale, continues only while they are such tenants. 2 Bl. Comm. 109.

Nature of Estate.

One of the peculiarities of a base or determinable fee is that it may become a fee simple absolute on the happening of any event which renders impossible the event or combination of events upon which such an estate is to end. Chapman v. Cheney, 191 Ill. 592; Koeffler v. Koeffler, 185 Ill. 268; Lombard v. Witbeck, 173 Ill. 408; Friedman v. Steiner, 107 Ill. 132.

It is the uncertainty of the event, and the possibility that the fee may not last forever, that renders a base or determinable estate a fee, and not merely a free-hold. Friedman v. Steiner, 107 Ill. 132. To the same effect see Wiggins, etc., Co. v. Ohio & M. Ry. Co., 94 Ill. 93. To the same effect see Frail v. Carstairs, 187 Ill. 313.

A base or determinable fee is a fee

simple estate—not absolute, but qualified. Gannon v. Peterson, 193 Ill. 381.

If the owner of a base or determinable fee conveys in fee, the determinable quality of the fee follows the transfer. Orr v. Yates, 209 Ill. 232; Becker v. Becker, 206 Ill. 56.

Elements.

In a base or determinable fee there is always a possibility of the determination of the fee upon the happening of an uncertain event. North v. Graham, 235 Ill. 180; Jones v. Port Huron, etc., Co., 171 Ill. 507.

What Constitutes.

A deed of land to the trustees of a school district so long as the land shall be used for school purposes creates a base or determinable fee. Dees v. Cheurronts, 240 Ill. 490; 147 Ill. App. 55.

Deed.

A deed conveying land to the trustees of a church with the provisions that it shall revert to the grantor "whenever it ceases to be used or occupied for a meeting house or church" creates a base or determinable fee. North v. Graham, 235 Ill. 180.

Estate of Mortgagee As.

Courts of law now regard the title of a mortgagee in fee as in the nature of a base of determinable fee, the term of which is measured by the mortgage debt, and which is extinguished by operation of law when paid or barred by the Statute of Limitations. Lightcap v. Bradley, 186 Ill. 522.

Conveyance on Condition Subsequent.

A conveyance on condition subsequent passes a base or determinable fee. Hart v. Lake, 273 Ill. 65.

WШ.

A devise to one coupled with the condition that in case the devisee dies without heirs of his body, or similar conditions, a devise over shall take effect, creates a base or determinable fee. Orr v. Yates, 209 Ill. 232; Koeffler v.

Koeffler, 185 Ill. 269; Lombard v. Witbeck, 173 Ill. 408.

A devise of land to a widow "provided she remains my widow," with a devise over in case of her remarriage, creates a base or determinable fee, subject to be terminated by her remarriage. Cummings v. Lohr, 246 Ill. 580. To the same effect see Becker v. Becker, 206 Ill. 56.

A devise of real estate to the testator's daughter, "then to her heirs," and if the daughter "should die leaving no heirs of her own," then the land shall be sold and the proceeds divided as specified in the will, passes a base or determinable fee. Ahlfield v. Curtis, 229 Ill. 142.

BASE OR QUALIFIED FEE.

Blackstone's Definition.

"A base or qualified fee is such a one as hath a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. Knight v. Pottgieser, 176 Ill. 375; Wiggins, etc., Co. v. Ohio & M. Ry. Co., 94 Ill. 93.

BASE TENANTS.

- (1) Tenants who held their lands at the will of their superior lord, as distinguished from "frank tenants" (q. v.), who were freeholders.
- (2) Tenants who rendered to their lords services in villeinage. Cowell.

BASE TENURE.

A tenure by villeinage, or other customary service, as distinguished from tenure by military service, or from tenure by free service. Cowell.

BASTARD.

Bastardy Act-What Constitutes.

In order to be deemed a "bastard" under section 1 of the Bastardy Act (J. & A. ¶703), a child must be both begotten and born when the mother is an unmarried woman. People v. Griffin, 142 Ill. App., 592; Bunn v. People, 103 Ill. App. 346.

BASTARD EIGNE.

Bastard elder.

By the old English law, when a man had a bastard son, and he afterwards married the mother, and by her had a legitimate son, the first was called a bastard eigne, or, as it is now spelled, aine, and the second son was called puisne, or since born, or sometimes he was called mulier puisne. See 2 Bl. Comm. 248.

BATH, KNIGHTS OF THE.

In English law. A military order of knighthood instituted by Richard II. The order was newly regulated by notifications in the London Gazette of 25th May, 1847, and 16th August, 1850. Wharton.

BATTEL.

Trial by combat.

It was called also "wager of battel" or "battaile," and could be claimed in appeals of felony. It was of frequent use in affairs of chivalry and honor, and in civil cases upon certain issues. Co. Litt. § 294. It was not abolished in England till the enactment of St. 59 Geo. III. c. See 1 Barn. & Ald. 405; 3 Sharswood, Bl. Comm. 339; 4 Sharswood, Bl. Comm. 347. See "Appeal." This mode of trial was not peculiar to England. The emperor Otho, A. D. 983, held a diet at Verona, at which several sovereigns and great lords of Italy, Germany, and France were present. In order to put a stop to the frequent perjuries in judicial trials, this diet substituted in all cases, even in those which followed the course of the Roman law, proof by combat for proof by oath. Henrion de Pansey, Auth. Judic. Introd. c. 3. And for a detailed account of this mode of trial, see Herbert, Inns of Court, 119-145.

BATTERY.

The willful touching of the person of another by the aggressor or by some substance put in motion by him. Razor

v. Kinsey, 55 Ill. App. 614; Westcott v. Arbuckle, 12 Ill. App. 580.

Any unlawful beating, or other wrongful physical violence or constraint, inflicted on a human being without his consent. 2 Bish. Crim. Law, § 62; 17 Ala. 540; 9 N. H. 491. It includes every touching of another in a rude, angry, or hostile manner. 65 Ala. 520; 67 Ind. 304.

At Common Law.

At the common law the least touching of the person of another in anger was a battery, for as it is said, the law can not draw the line between different degrees of violence, and therefore totally prohibits the lowest stage of it. Hunt v. People, 53 Ill. App. 112.

BAY WINDOW.

A window projecting beyond the line of the front of a house, generally either in a semi-hexagon or semi-octagon. Hieronimus v. Moran, 272 Ill. 258.

The fact that a bay window rises from a foundation in the ground instead of being a mere projection outward from the wall some distance above the ground does not make it the less a bay window within the ordinary meaning of that term. Hieronimus v. Moran, 272 Ill. 258; Keith v. Goldsmith, 194 Ill. 491.

"Oriel"-"Bow Window" Compared.

Strictly speaking a "bay window" rises from the ground or basement, while an "oriel" is supported on a corbel or brackets, and a "bow window" is always a segment of an arch but in ordinary use these distinctions are seldom accurately observed, all these words being used as synonymous. Hieronimus v. Moran, 272 Ill. 258.

BAYS.

Building Line Agreement.

The word "bays," used in a building line agreement excepting from "porches, bays and ornamental projections," means bay windows, and includes a bay window the walls of which extend from the ground to the roof of the building and form extensions of rooms in each story of the building. Hieronimus v. Moran, 272 Ill. 258.

BEAM SCALE.

An apparatus in construction something like a large saw horse and used for hanging scales to. Tobin v. Friedman, 67 Ill. App. 151.

BEARING DATE.

Words frequently used in pleading and conveyancing to introduce the date which has been put upon an instrument.

When, in a declaration, the plaintiff alleges that the defendant made his promissory note on such a day, he will not be considered as having alleged that it bore date on that day, so as to cause a variance between the declaration and the note produced bearing a different date. 2 Greenl. Ev. § 160; 2 Dowl. & L. 759.

BEAUPLEADER.

(Law Fr. fair pleading.) A writ of prohibition directed to the sheriff or other, directing him not to take a fine for beaupleader.

There was anciently a fine imposed called a "fine for beaupleader," which is explained by Coke to have been originally imposed for bad pleading. Coke, 2d Inst. 123. It was set at the will of the judge of the court, and reduced to certainty by consent, and annually paid. Comyn, Dig. "Prerogative" (D 52). St. Marlebridge (52 Hen. III.) c. 11, enacts that neither in the circuit of justices, nor in counties, hundreds, or courts baron any fines shall be taken for fair pleading, namely, for not pleading fairly or aptly to the purpose. Upon this statute, this writ was ordained, directed to the sheriff, bailiff, or him who shall demand the fine, and it is a prohibition or command not to do it. New Nat. Brev. 596; Fitzh. Nat. Brev. 270a; Hall, Hist. Com. Law, c. 7. Mr. Reeve explains it as a fine paid for the privilege of a fair hearing. 2 Reeve, Hist. Eng. Law, 70. This latter view

would perhaps derive some confirmation from the connection in point of time of this statute with Magna Charta, and the resemblance which the custom bore to the other customs against which the clause in the charter of nulli vendemus, etc., was directed. See Comyn, Dig. "Prerogative" (D 51, 52); Cowell; 2 Inst. 122, 123; Crabb, Hist. Eng. Law, 150.

BECOME INDEBTED.

Constitution of 1870.

The expression "become indebted," used in section 12 of article 9 of the Constitution of 1870, limiting the indebtedness of municipal corporations, means to voluntarily incur a legal liability to pay. Lobdell v. Chicago, 227 Ill. 234; People v. Chicago & T. R. Co., 223 Ill. 451; Chicago v. McDonald, 176 Ill. 408; Prince v. Quincy, 128 Ill. 457; Springfield v. Edwards, 84 Ill. 632.

A city will "become indebted," within the meaning of section 12 of article 9 of the Constitution of 1870, limiting the indebtedness of municipal corporations, where it issues certificates to enlarge a system of waterworks already existing and pledges the entire proceeds of the existing system to secure the payment of the certificates. Schnell v. Rock Island, 232 Ill. 99.

In order that a city may not "become indebted," within the meaning of section 12 of article 9 of the Constitution of 1870, limiting the indebtedness municipal corporations, by appropriating money to be received from taxation to the discharge of an obligation accruing in the future, the tax so appropriated must at the time be actually levied, and by the legal effect of the contract made at the time of the appropriation, the appropriation and issuing and accepting of a warrant or order on the treasury for its payment must operate to prevent any liability to accrue on the contract to the corporation. Schnell v. Rock Island, 232 Ill. 97; Springfield v. Edwards, 84 Ill. 633.

Where a city made a contract with a water company to construct and operate a water plant in a certain manner, so as

to provide water for citizens and for the city for fire purposes, and providing that when the plant was tested in a certain manner the city would pay a certain amount per hydrant for the use of the water, the city does not "become indebted," within the meaning of section 12 of article 9 of the Constitution of 1870, limiting the indebtedness of municipal corporations, for such payments, until the water company was completely ready to furnish water as stipulated in the contract. Carlyle, etc., Co. v. Carlyle, 31 Ill. App. 840.

To issue certificates of indebtedness payable at a future day, bearing interest and to be paid out of the revenue levied for the current year is to "become indebted" within the meaning of section 12 of article 9 of the Constitution of 1870 limiting the indebtedness of municipal corporations. Law v. People, 87 Ill. 393.

For a city to contract at all events to pay for a system of waterworks when completed as provided by the contract is to "become indebted" within the meaning of section 12 of article 9 of the Constitution of 1870, limiting the indebtedness of municipal corporations. Culbertson v. Fulton, 127 Ill. 36.

BED OF THE RIVER.

That portion of the river which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring, or the extreme droughts of the summer or autumn. Peoria v. Central, etc., Bank, 224 Ill. 54.

That part between the banks worn by the regular flow of the water. Haigh v. Lenfesty, 239 Ill. 233.

BEER.

Elements.

A fermented liquor, made from any malted grain, with hops and other bitter flavoring matters. A fermented extract of the roots and other parts of various

plants, as, spruce, ginger, sassafras, etc. Hansberg v. People, 120 Ill. 24.

Classification.

Beer has different names, such as small beer, ale, porter, brown stout, lager beer, etc., according to its strength or other qualities. Hansberg v. People, 120 Ill. 24.

As Importing Intoxicating Drink.

The word "beer," when employed in connection with sales in a place where intoxicating liquors are usually sold, means an intoxicating drink. Hall v. People, 134 Ill. App. 560.

BEFORE INHERITING.

Will.

Where a testator provided in his will that his wife have the right to remain on and derive her support from his farm. and that after her death and at the majority of the youngest child the farm be sold and the proceeds divided among seven named younger children, and further providing that if any of those named died "before inheriting" his, her or their inheritance the fund should be divided among the survivors, the expression "before inheriting" refers to the time of the sale of the farm and the distribution of the proceeds and not to the time of the testator's death. Ridgeway v. Underwood, 67 Ill. 426.

BEFORE THE JURY RETIRE FROM THE BAR.

Taking a Non-Suit.

In jury trials, the only limitation that has ever been imposed by statute in this State upon the common law right of a plaintiff to dismiss his suit at any time before a verdict is returned is the provision that he must do so "before the jury retire from the bar." In the ordinary case of a trial by jury the jury do not "retire from the bar" until they have heard all the evidence, the arguments of counsel and the instructions of the court; and in such case it is the undoubted right of the plaintiff, under the statute, to dismiss his suit at his costs, after all the

instructions have been given, provided he does so in the moment of time that usually intervenes between the reading of the last instruction and the actual retirement of the jury from the box to consider their verdict. Daube v. Kuppenheimer, 195 Ill. App. 102.

BEFORE TRIAL.

Criminal Code.

The expression "before trial," used in Gross' St. 216, now section 9 of division 11 of the Criminal Code (J. & A. ¶ 4108), relating to exceptions to the form of indictments, have been uniformly held to mean before plea pleaded. Winship v. People, 51 Ill. 298.

BEGGAR.

One who obtains his livelihood by ask-The laws of several of the ing alms. states punish begging as an offense.

Words of solicitation are not necessary, but the solicitation may be by attitude or gesture. 3 Abb. N. C. (N. Y.) 65.

BEGINNING.

Of Suit at Law.

The issuing of a summons and its delivery to the sheriff is the beginning of a suit at law. Pollock v. Kinman, 176 Ill. App. 366. See Hekla, etc., Co. v. Schroeder, 9 Ill. App. 476, where it is held that the "beginning" of a suit at law is the delivery to the sheriff for service of a properly executed and attested summons.

BEHAVIOR.

The bearing with respect to propriety, morals and the requirements of law. United States v. Hrasky, 240 Ill. 564.

Manner of having, holding, or keeping one's self; carriage of one's self, with respect to propriety, morals, and the requirements of law. Surety to be of good behavior is a larger requirement than surety to keep the peace. Dalton, c. 122; 4 Burns, Just. 355.

an official can be removed, is not confined to misbehavior in office. 2 Mart. (La.; N .S.) 700.

BELIEF.

A condition of mind. Coughlin v. People, 144 Ill. 196.

Conviction of the mind, arising not from actual perception or knowledge, but by way of inference, or from evidence received or information derived from others. It differs from "knowledge" only in degree. 9 Gray (Mass.) 274. It is said to be a stronger word than "imagination" (4 Ga. 37), or suspicion (5 Cush. [Mass.] 374), but has been held to be substantially synonymous with "supposition" (102 Ill. 277).

Belief may evidently be stronger or weaker, according to the weight of evidence adduced in favor of the proposition to which belief is granted or refused, and so "firm belief" in a statute means more than "belief." 4 Serg. & R. (Pa.) 137; 1 Greenl. Ev. §§ 7-13. See 1 Starkie, Ev. 41; 2 W. Bl. 881; 8 Watts (Pa.) 406.

BELIEVE.

To think; to suppose. Parker v. Enslow, 102 Ill. 277.

BELLIGERENT.

A subject of the hostile power. Johnson v. Jones, 44 Ill. 151.

BELLIGERENT.

Actually at war. Applied to nations. Wheat. Int. Law, 380 et seq.; 1 Kent, Comm. 89.

Disloyal Citizen Not Included.

A citizen of a loyal state in the Civil War, remaining in such state and not engaged in the war is not a belligerent, although disloyal. Johnson v. Jones. 44 Ill. 151.

BELONG.

To be the property of. People v. Ben-A "breach of good behavior," for which | nett, etc., College, 248 Ill. 610; Gammon v. Gammon, 153 Ill. 47; Bragg v. Chicago, 73 Ill. 154.

Constitution of 1870.

The word "belong," used in section 16 of article 6 of the Constitution of 1870, relating to the salaries of judges, implies "fixed; prescribed by some regulation." Bruce v. Dickey, 116 Ill. 535.

BELONGING.

Denotes Title or Ownership.

The word "belonging" denotes title or ownership. People v. Bennett, etc., College, 248 Ill. 610; People v. Chicago, etc., Seminary, 174 Ill. 182.

That which is connected with a principal or greater thing; an appendage; an appurtenance. People v. Chicago, etc., Seminary, 174 Ill. 182.

BELONGING TO ANY DECEASED PERSON.

Administration Act.

The words "belonging to any deceased person," used in section 81 of the Administration Act (J. & A. ¶ 130), can only mean "belonging to the estate of any deceased person." Blair v. Sennott, 134 Ill. 87. See Steinman v. Steinman, 105 Ill. 349, where by necessary inference the same construction is given.

Section 81 of the Administration Act (J. & A. ¶ 130), providing for summary proceedings against any person having property "belonging to any deceased person," which he refuses to disclose or deliver to the administrator, apply only to money or property remaining unchanged and in specie, and not to the proceeds of collections made by an attorney under an employment by the administrator. Dinsmoor v. Bressler, 164 III. 218.

BELONGING TO SAID CORPORA-TION.

Taxation-Property.

Warehouses built on land leased to the owners by a railroad company with privlonging to said corporation," within the meaning of a provision in its charter with reference to any annual tax on such property. Gilkerson v. Brown, 61 Ill. 488.

BELONGING TO THE SAME.

Assignment of Lease.

An assignment of the lease of a building used as a business house demising fixtures attached thereto and "belonging to the same," expressly excludes from the operation of the conveyance all fixtures not procured for or used in connection with the buildings as a business house. Stettauer v. Hamlin, 97 Ill. 319.

BENCHER.

A senior in the Inns of Court, intrusted with their government or direction.

The benchers have the absolute and irresponsible power of punishing a barrister guilty of misconduct, by either admonishing or rebuking him, by prohibiting him from dining in the hall, or even by expelling him from the bar, called "disbarring." They might also refuse admission to a student, or reject his call to the bar. Wharton.

BENEFICIAL ENJOYMENT.

The enjoyment of an estate in one's own right, and for his own benefit, and not as trustee for another. 3 Hurl. & C. 1030.

BENEFICIAL POWER.

"A power is beneficial when no person other than the grantee has, by the terms of its creation, any interest in its execution." Rev. St. N. Y. § 79.

A power is beneficial if, by the terms of its creation, no interest in its execution is given to a person other than the grantee, though no such interest is especially given to the grantee. 73 N. Y. 234.

BENEFICIALLY ENTITLED.

Revenue Act.

One is "beneficially entitled" to propilege of removal are not property "be- | erty, within the meaning of section 1 of the act of 1909 (J. & A. ¶9597), known as the Inheritance Tax Act, when the beneficiary has the title to the property or is entitled to its possession, or when a contingent interest vests or a defeasible interest becomes indefeasible. People v. McCormick, 208 Ill. 442.

BENEFICIAL INTEREST.

Designation of Estate.

A beneficial interest, when considered as a designation of the character of an estate, is such an interest as a devisee takes solely for his own use or benefit and not as a mere holder of the title for the use of another. People v. Schaefer, 266 Ill. 840; People v. McCormick, 208 Ill. 442.

BENEFICIARY.

One for whose benefit a trust is created; a cestui que trust. Matecny v. Vierling, etc., Works, 187 Ill. App. 457.

BENEFICIUM ORDINIS.

In Scotch and civil law. The privilege of the surety allowing him to require that the creditor shall take complete legal proceedings against the debtor to exhaust him before he calls upon the surety. 1 Bell, Comm. 347.

BENEFIT.

Charter of Beneficiary Society.

A certificate of the promoters of a beneficiary society organized under the general law declaring that its objects are to give financial aid and "benefit" to widows, etc., of deceased members uses the word "benefit" in its legal sense—that of the direct and absolute enjoyment of the sum to be paid, or of its use, and an undertaking to "benefit" such persons, within the meaning of a certificate, must be one to pay, after the death of the member, directly to the persons to be benefited, or in such way that they shall be the immediate recipients of the use of

the sum to be paid, and does not include an agreement to pay to the member on his arriving at a certain age. Rockhold v. Canton, etc., Society, 129 Ill. 456.

BENEFIT OF CLERGY.

In English law. An exemption of the punishment of death, which the laws impose on the commission of certain crimes, on the culprit demanding it. By modern statutes, benefit of clergy was rather a substitution of more mild punishment for the punishment of death.

A clergyman was exempt from capital punishment toties quoties, as often as, from acquired habit, or otherwise, he repeated the same species of offense. The laity, provided they could read, were exempted only for a first offense; for a second, though of an entirely different nature, they were hanged. Among the laity, however, there was this distinction: Peers and peeresses were discharged for their first fault without reading, or any punishment at all; commoners, if of the male sex, and readers, were branded in Women commoners had no the hand. benefit of clergy.

Benefit of clergy was latterly granted, not only to the clergy, as was formerly the case, but to all persons. The benefit of clergy seems never to have extended to the crime of high treason, nor to have embraced misdemeanors inferior to felony. See 1 Chit. Crim. Law, 667, 668; 4 Bl. Comm. c. 28; 1 Bish. Crim. Law, §§ 622-624. But this privilege, improperly given to the clergy, because they had more learning than others, was abolished by St. 7, Geo. IV. c. 28, § 6.

By the act of congress of April 30, 1790, it is provided (section 30) that the benefit of clergy shall not be used or allowed upon conviction of any crime for which, by any statute of the United States, the punishment is, or shall be declared to be, death.

In some early state decisions, the right was recognized in the United States (1 Murph. [N. C.] 147; 4 Strobh. [S. C.] 372), while in others it is held to be obsolete (1 Blackf. [Ind.] 66; 3 Minn. 246).

BENEVOLENCE.

Good will; kindness; humanity. It is a broader word than "charity." 19 N. J. Fq. 307; 44 Conn. 60; 11 Mass. 267.

- In Old English Law.

A voluntary gratuity given by the subjects to the king. Cowell. Benevolences were first granted to Edward IV.; but under subsequent monarchs they became anything but voluntary gifts, and in the Petition of Rights (3 Car. I.) it is made an article that no benevolence shall be extorted without the consent of parliament. The illegal claim and collection of these benevolences was one of the prominently alleged causes of the rebellion of 1640. 1 Bl. Comm. 140; 4 Bl. Comm. 436; Cowell.

BENEVOLENT.

A term of wider and more indefinite meaning than "charitable," and generally held too indefinite to uphold a bequest for such purposes. 19 N. J. Eq. 307; 5 Beav. 300; 107 U. S. 184.

BEQUEATH.

To give personal property by will to another. 13 Barb. (N. Y.) 106. The word may be construed "devise," so as to pass real estate. 36 Me. 216; 119 Mass. 525.

Will—Gift of Personalty Not Necessarily Imported.

The use of the word "bequeath" in a will disposing of both real and personal property does not necessarily import a gift of personal property only. Rickman v. Meier, 213 Ill. 521.

BEQUEST.

As Including Personalty.

The word "bequest" in a clause of a will, requiring a deduction from the "bequest" to one child referred to realty, as well as personalty, where in a number of other clauses, the testator disposed of his property, in some cases realty only, in other cases personalty only, using in

each case the words of gift, "I give, devise and bequeath," thus making no distinction between a devise and a bequest. Jordan v. Jordan, 281 Ill. 421.

Dower Act-Devise Synonymous.

In section 10 of the Dower Act of 1845 the words "devise" and "bequest" seem to have been used as convertible terms, and as meaning a gift, by will, of land, or an interest therein. Evans v. Price, 118 Ill. 599.

Any Gift by Will.

The word "bequest" may mean any gift by will, whether it consists of personal or real property. Rickman v. Meier, 213 Ill. 521.

BERLINSKI TEST.

A test used by neurologists consisting in the application of a test tube containing hot water, a test tube containing cold water, a piece of metal which feels cold when applied to a person's skin in its normal sensitiveness, a piece of wood and a piece of cloth. Shaughnessy v. Holt. 140 Ill. App. 576.

BERME.

Civil Engineering.

A horizontal ledge or shelf at the bottom or part way up a bank or slope. People v. Klehm, 238 Ill. 92.

BERM SIDE.

Canal.

The side opposite the tow path. People v. Economy, etc., Co., 241 Ill. 364.

BEST EVIDENCE.

The best evidence of which the nature of the case admits, not the highest or strongest evidence which the nature of the thing to be proved admits of; e. g., a copy of a deed is not the best evidence; the deed itself is better. Gilb. Ev. 15; Starkie, Ev. 437; 2 Campb. 605; 3 Campb. 236; 1 Esp. 127; 1 Pet. (U. S.) 591; 6 Pet. (U. S.) 352; 7 Pet. (U. S.) 100. The term is confined to cases where the

law has divided evidence into primary and secondary. 33 Mich. 53. The rule requiring the best evidence does not exclude a witness on the ground that another is more credible, but merely excludes such evidence as is substitutionary in its character, if the original evidence can be had. 65 Me. 467.

BET.

A wager; a contract by which two or more parties agree that a sum of money or other thing shall be paid or delivered to one of them on the happening of an uncertain event. Jacobus v. Hazlett, 78 Ill. App. 241.

An agreement that some valuable thing or sum of money, in contributing which all the parties take part, shall become the property of some one or more of them on the happening of some event which is at present uncertain. 81 N. Y. 539. See, also, 7 Port. (Ala.) 465. "If one of the parties may gain, but cannot lose, and the other may lose, but cannot gain, and there must be either a gain by the one, or a loss by the other, according to the happening of the contingency, it is as much a bet or wager as if the parties had shared equally the chances of gain or loss." 15 Grat. (Va.) 661.

The words "bet" and "wager" are synonymous. 11 Ind. 16.

BETTERMENTS.

Improvements made to an estate. It signifies such improvements as have been made to the estate which render it better than mere repairs. 11 Me. 482; 23 Me. 110; 24 Me. 192; 13 Ohio 308; 10 Yerg. (Tenn.) 477; 13 Vt. 533; 17 Vt. 109. The term is also applied to denote the additional value which an estate acquires in consequence of some public improvement, as laying out or widening a street, etc.

BETTING.

Book Making and Pool Selling.

Book making and pool selling are each betting upon the horse race or particular

event upon which they are made or sold, questioned, the betting being with the bookmakers, while in the second it is among the purchasers of the pool, they paying a commission to the seller. Swigart v. People, 154 Ill. 288.

BETWEEN.

Grant.

A grant of land lying between two named lots would not embrace either of the named lots. Richardson v. Ford, 14 Ill. 333.

Time.

When the word "between" is used with reference to a period of time bounded by two other specified periods of time, such as between two days named, the days or other periods of time named as boundaries are excluded. Richardson v. Ford, 14 Ill. 333; Winans v. Thorp, 87 Ill. App. 298; Coleman v. Keenan, 76 Ill. App. 318.

Space.

The word "between," when used in reference to two named boundaries of space, excludes both the boundaries named. Winans v. Thorp, 87 Ill. App. 298.

Public Utilities Act.

The term "between any two points in this state," as used in section 42 of the Illinois Public Utilities Act [Callaghan's 1916 Stats. Supp. paragraph 8686 (57)], finding that when the commission after a hearing, shall find that the rates "between any two points in this state" are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate or other charge exists between such points, the commission may order such carriers to establish such common through route and may establish and fix a joint rate or other charge which will be just and reasonable, merely refers to the territory over which the jurisdiction of the state and its agencies extends in regulating common carriers, as distinguished from the territory over which the jurisdiction of the federal government extends in like matters. State Public Utilities Commission, ex rel., The American Sand and Gravel Co. v. The Chicago and Northwestern R. Co., 279 Ill. 110.

BETWEEN FEBRUARY 1st AND JULY 1st.

Policy of Insurance.

A policy of insurance on goods "to be shipped between February 1st and July 1st" does not cover goods shipped on either of those days. Richardson v. Ford, 14 Ill. 333; Coleman v. Keenan, 76 Ill. App. 318.

BETWEEN NOW AND THE 1st OF SEPTEMBER.

Covenant.

Where one covenants to pay money "between now and the 1st of September," no sufficient tender of performance is made by an offer to pay on September 1. Richardson v. Ford, 14 Ill. 338.

BIAS.

A particular influential power which sways the judgment; the inclination or propensity of the mind towards a particular object. "Bias is not synonymous with 'prejudice.' A man cannot be prejudiced against another without being biased, but he may be biased without being prejudiced." 12 Ga. 444.

BIBLE.

The inspired word of God, of which the Creator of the Universe is the author; a book of divine instruction as to the creation of man, his relation to, dependence on and accountability to God. People v. Board of Education, 245 Ill. 343.

Distinctive Feature.

The distinctive feature of the Bible is its claim to teach a system of religion revealed by direct inspiration from God. People v. Board of Education, 245 Ill. 343.

BID.

Corporations Act.

The word "bid," used in section 8 of immovable proper the act of 1879 (J. & A. ¶ 2605), known lund, 168 Ill. 636,

as the Homestead Loan Associations Act, relating to the holding of directors' meetings for loaning money, does not require the bidder to be personally present at the meeting at which he bids, but permits bids to be made in writing. Savage v. Evanston, etc., Ass'n, 228 Ill. 436.

BIDDER.

One who offers to purchase an article offered for sale at a public auction (Webster v. French, 11 Ill. 254), or to furnish materials or services at a price submitted.

BIELBRIEF.

In European Maritime Law.

(Ger.) A document furnished by the builder of a vessel, containing a register of her admeasurement, particularizing the length, breadth, and dimensions of every part of the ship. It sometimes also contains the terms of agreement betwen the parties for whose account the ship is built, and the shipbuilder. It has been termed in English the "grand bill of sale;" in French, "contrat de construction ou de la vente d'un vaisseau," and corresponds in a great degree with the English, French, and American "register" (q. v.), being an equally essential document to the lawful ownership of vessels. Jac. Sea Laws, 12, 13, and note.

In the Danish Law.

Used to denote the contract of bottom-ry.

BIENS.

Strict Meaning.

A French word, definable as property of every description, except estates of freehold and inheritance. Adams v. Akerlund, 168 Ill. 635.

Classification.

The term "biens," as used in the French law, is divided into "biens meubles," and "biens immeubles." Adams v. Akerlund, 168 Ill. 636.

BIENS IMMEUBLES.

A term of the French law, definable as "immovable property." Adams v. Akerlund, 168 Ill. 636,

BIENS MEUBLES.

A term of the French law, definable as "movable property." Adams v. Akerlund, 168 Ill. 636.

BIG FOUR.

The Cleveland, Cincinnati, Chicago and St. Louis Railway Company. Illinois C. R. Co. v. Foulks, 191 Ill. 65.

BIGAMUS.

In civil law. One who had been twice married, whether both wives were alive at the same time or not; one who had married a widow. Especially used in ecclesiastical matters as a reason for denying benefit of the clergy. Termes de la Ley.

BIGAMY.

A crime, consisting of marrying a second husband or wife while the first husband or wife is living and undivorced. Prichard v. People, 149 Ill. 54.

At Common Law.

The willfully contracting a second marriage when the contracting party knows that the first is still subsisting.

The state of a man who has two wives, or of a woman who has two husbands, living at the same time.

When the man has more than two wives, or the woman more than two husbands living at the same time, then the party is said to have committed polygamy; but the name of "bigamy" is more frequently given to this offense in legal procedings. 1 Russ. Crimes, 187; Clark & Marshall, Crimes, 1103. "But as the substance of the offense is marrying a second time while having a lawful husband or wife living, without regard to the number of marriages that may have taken place, 'bigamy' seems not an inappropriate term. The objection to its use urged by Blackstone (4 Bl. Comm. 163) seems to be founded not so much upon considerations of the etymology of the word, as upon the propriety of distinguishing the ecclesiastical offense, termed 'bigamy' in the canon law, and defined below, from the offense known as 'bigamy' in the modern criminal law. The same distinction is carefully made by Lord Coke. 4 Inst. 88. But the ecclesiastical offense being now obsolete, this reason ceases to have weight." Abbott.

In the Canon Law.

According to canonists, bigamy is threefold, viz., vera interpretativa, et similitudinaria, real, interpretative, and similitudinary. The first consisted in marrying two wives successively (virgins they may be), or in once marrying a widow; the second consisted, not in a repeated marriage, but in marrying (e. g., meretricem vel ab alio corruptam) a harlot: the third arose from two marriages, indeed, but the one metaphorical or spiritual, the other carnal. This last was confined to persons initiated in sacred orders. or under the vow of continence. Deferriere's Tract. Juris Canon, tit. 21. See also, Bac. Abr. "Marriage."

BI-LATERAL CONTRACT.

A contract executed by both parties and containing covenants or obligations to be performed by each of them, is a bi-lateral contract. University Club v. Deakin, 265 Ill. 260.

BILL.

As Applied to Legislative Act.

The word "bill," as applied to a legislative act, may mean the bill as it is first introduced in one of the houses of the legislature, or may refer to it at any time in any of its stages till finally passed by both houses, signed by the officers of each house, approved by the governor, and filed by the secretary of state, and whether it is used in any of these stages to include amendments pending or already adopted must be determined from the connection. People v. Brady, 262 Ill. 588.

Constitution of 1870.

The word "bill," as used in the first sentence of section 13 of article 4 of the Constitution of 1870, relating to legislative procedure, means, as used in the first clause of the sentence, the original bill on first reading without amendments, or the bill on subsequent readings without amendments, and as used in the second clause, means the bill without amendments, and as used in the third clause, the bill with all amendments as finally passed. People v. Brady, 262 Ill. 588.

Includes Amendments.

After a bill has been amended the amendment is incorporated as a part of the text of the bill and is properly understood to be included in the word "bill." People v. Brady, 262 Ill. 588.

BILL CHAMBER.

In Scotch Law.

A department of the court of session, in which petitions for suspension, interdict, etc., are entertained. It is equivalent to sittings in chambers in the English and American practice. Paterson, Comp.

BILL FOR A NEW TRIAL.

In equity practice. One filed in a court of equity praying for an injunction after a judgment at law when there is any fact which renders it against conscience to execute such judgment, and of which the irjured party could not avail himself in a court of law, or, if he could, was prevented by fraud or accident, unmixed with any fault or negligence of himself or his agents. Mitf. Eq. Pl. (Jeremy Ed.) 131; 2 Story, Eq. Jur. § 887. Of late years, bills of this description are not countenanced. 1 Johns. Ch. (N. Y.) 432; 6 Johns. Ch. (N. Y.) 479.

BILL IN NATURE OF A BILL IN REVIEW.

One which is brought by a person not bound by a decree, praying that the same may be examined and reversed; as where a decree is made against a person who has ro interest at all in the matter in dispute, or had not an interest sufficient to render the decree against him binding upon some person claiming after him. The term is used in two senses: (1) A bill brought by one not a party to a decree, to obtain the reversal thereof. Adam, Eq. 419. (2) A bill to set aside a decree on the ground of fraud. 48 Mich. 375.

BILL IN THE NATURE OF A BILL OF INTERPLEADER.

Bill of Interpleader Compared.

A bill in the nature of a bill of interpleader differs from a bill of interpleader in this: that the complainant, by it, seeks not only to have the conflicting claims of the defendants against himself which he desires to discharge to the proper parties adjudicated, but also some affirmative relief, whereas in a bill of interpleader, strictly, he only asks that he may be at liberty to pay money or deliver property to the party to whom it of right belongs, and that he may thereafter be protected against the claims of both. Heath v. Hurless, 73 Ill. 327; Brocklebank v. Lasher, 109 Ill. App. 630.

BILL IN NATURE OF A BILL OF REVIVOR.

One which is filed when the death of a party, whose interest is not determined by his death, is attended with such a transmission of his interest that the title to it, as well as the person entitled, may be litigated in the court of chancery; as, in the case of a devise of real estate, the suit is not permitted to be continued by bill of revivor. In such cases, an original bill, upon which the title may be litigated, must be filed, and this bill will have so far the effect of a bill of revivor that, if the title of the representative by the act of the deceased party is established, the same benefit may be had of the proceedings upon the former bill as if the suit had been continued by bill of revivor. Story, Eq. P!. §§ 378-380; 2 Paige (N. Y.) 358; 3 Atk. 217.

BILL IN NATURE OF A SUPPLE-MENTAL BILL.

One which is filed when the interest of the plaintiff or defendant, suing or defending, wholly determines, and the same property becomes vested in another person not claiming under him. The principal difference between this and a supplemental bill seems to be that a supplemental bill is applicable to such cases only where the same parties or the same interests remain before the court; whereas an original bill in the nature of a supplemental bill is properly applicable where new parties, with new interests, arising from events occurring since the institution of the suit, are brought before the court. Story, Eq. Pl. § 345.

BILL OF CONFORMITY.

In equity practice. One filed by an executor or administrator, who finds the affairs of the deceased so much involved that he cannot safely administer the estate except under the direction of a court of chancery. This bill is filed against the creditors generally, for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the assets. 1 Story, Eq. Jur. 440.

BILL OF CREDIT.

Chief Justice Marshall's Definition.

A bill of credit, in its enlarged and perhaps literal sense, may comprehend any instrument by which a state engages to pay money at a future day, thus including a certificate given for money borrowed, but in common language instruments executed for such a purpose are not within the meaning of the term. Linn v. State Bank, 2 Ill. 90.

In Constitutional Law.

Paper issued by the authority of a state on the faith of the state, and designed to circulate as money. 11 Pet. (U. S.) 257.

Promissory notes or bills issued by a state government, exclusively, on the credit of the state, and intended to circulate through the community for its ordinary purposes as money, redeemable at a future day, and for the payment of

which the faith of the state is pledged. 4 Kent, Comm. 408.

The constitution of the United States provides that no state shall emit bills of credit, or make anything but gold and silver coin a tender in payment of debts. Article 1, § 10. This prohibition, it seems, does not apply to bills issued by a bank owned by the state, but having a specific capital set apart (11 Pet. [U. S.] 257; 13 How. [U. S.] 12; but see 4 Pet. [U. S.] 410), nor does it apply to notes issued by corporations or individuals which are not made legal tender (4 Kent, Comm. 408, and note).

In Mercantile Law.

A letter desiring the addressee to give credit to the bearer for goods or money. More commonly called "letter of credit." Comyn, Dig. "Merchant" (F 3); 3 Burrows, 1667; 13 Miss. 491; 4 Ark. 44; R. M. Charlt. (Ga.) 151.

BILL OF DISCOVERY.

In equity practice. One which prays for the discovery of facts resting within the knowledge of the person against whom the bill is exhibited, or of deeds, writings, or other things in his custody or power. It does not seek for relief in consequence of the discovery (and this constitutes its characteristic feature), though it may ask for a stay of proceedings till discovery is made (2 Story, Eq. Jur. § 1483), and such relief as does not require a hearing before the court, it is said, may be part of the prayer (2 Daniell, Ch. Pr. 1557; 1 Pom. Eq. Jur. § 191). See "Discovery."

BILL OF EXCEPTIONS.

The term "bill of exceptions" has frequently been understood in practice, in this and other jurisdictions, to mean the general document by which the record of the proceedings of the trial court was preserved for review, without regard to formal exceptions being taken as to each adverse ruling of the trial court, the connection in which the term is used showing plainly the meaning intended. The

term has frequently been applied by this court in referring to a document used in equity proceedings to preserve evidence for review, and this, too, when no exceptions were required to be noted in such trials. However, it has been held that the term was not appropriately used with reference to proceedings in equity.

It is obvious from a reading of section 81 of the Practice Act that the legislature intended to treat bills of exceptions, certificates of evidence, and reports of trial as meaning substantially the same thing. The last sentence of the section as amended reads: "Such bill of exceptions may be prepared by any competent reporter." Beyond question, the term "bill of exceptions" is used in that sentence as meaning either a bill, certificate or report. By the amendment to this section, the legislature intended to adopt a policy dispensing with the necessity of exceptions to preserve questions for review in courts generally, and the amendment, doing away with the necessity of formal exceptions to the rulings of the trial court, was undoubtedly made for the purpose of simplifying the practice and procedure in these matters. Miller v. Anderson, 269 Ill. 615.

As Pleading.

A bill of exceptions is the pleading of the party furnishing it and should include all matters of fact that were presented to the court with respect to the matter before it for decision. Graham v. Hagmann, 270 Ill. 259; Johnson v. Johnson, 187 Ill. 91; First, etc., Bank v. Haskell, 23 Ill. App. 617.

Certificate of Evidence Compared.

There is no distinction between a bill of exceptions and a certificate of evidence. Yott v. Yott, 257 Ill. 421.

Function.

The office of a bill of exceptions is to preserve in the record such matters as occur during a trial which would not otherwise become a part of the record. Yott v. Yott, 257 Ill. 421; Chicago v. Mecartney, 216 Ill. 379; McChesney

v. Chicago, 151 Ill. 308; Zimmerman v. Cowan, 107 Ill. 637; Wiggins, etc., Co. v. People, 101 Ill. 449; Kitchell v. Burgwin, 21 Ill. 45; Joliet & N. R. Co. v. Jones, 20 Ill. 226; Randolph v. Emerick, 13 Ill. 346; Wettrick v. Martin, 181 Ill. App. 99.

The sole office of a bill of exceptions is to make matters which are extrinsic, or out of the record, part of the record. Kitchell v. Burgwin, 21 Ill. 45.

It is the office of a bill of exceptions to bring before the appellate court matters de hors the record only, not the pleadings of the parties, for they are intrinsic, and are necessarily on the record, without being preserved by a bill of exceptions. Joliet & N. R. Co. v. Jones, 20 Ill. 226.

BILL OF EXCHANGE.

Notaries Public Act—Includes Inland Bill.

An inland bill of exchange is a "bill of exchange" within the meaning of section 10 of the Notaries Public Act (J. & A. ¶7847), relating to protest of commercial paper, the statute having changed the common law rule in that particular. Ewen v. Wilbor, 208 Ill. 503.

Check Compared.

Checks have many resemblances to bills of exchange, the principal difference being that checks are always drawn on a banker, and are payable immediately on presentation, without days of grace, and that they require no acceptance, as distinct from prompt payment. Culter v. Reynolds, 64 Ill. 322.

Elements.

The essential qualities of a bill of exchange are said to be that it must be payable at all events, not dependent on any contingency, nor payable out of a particular fund; and that it be for the payment of money only, and not for the performance of any other act or in the alternative. Gillilan v. Myers, 31 Ill. 528; Miller v. Excelsior, etc., Co., 1 Ill. App. 276.

BILL OF HEALTH.

In Commercial Law.

A certificate, properly authenticated, that a certain ship or vessel therein named comes from a place where no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper. It is generally found on board ships coming from the Levart, or from the coasts of Barbary, where the plague prevails (1 Marsh. Ins. 408), and is necessary whenever a ship sails from a suspected port, or where it is required at the port of destination (Holt, 167; 1 Bell, Comm. [5th Ed.] 553).

In Scotch Law.

An application of a person in custody to be discharged on account of ill health. Where the health of a prisoner requires it, he may be indulged, under proper regulations, with such a degree of liberty as may be necessary to restore him. 2 Bell, Comm. (5th Ed.) 549; Paterson, Comp. § 1129.

BILL OF INFORMATION.

In equity practice. One which is instituted by the attorney general or other proper officer in behalf of the state, or of those whose rights are the objects of its care and protection. If the suit immediately concerns the right of the state, the information is generally exhibited without a relator. If it does not immediately concern those rights, it is conducted at the instance and under the immediate direction of some person whose name is inserted in the information, and is termed the "relator." In case a relator is concerned, the officers of the state are not further concerned than as they are instructed and advised by those whose rights the state is called upon to protect and establish. 3 Bl. Comm. 261; Story, Eq. Pl. 5.

BILL OF INTERPLEADER.

A bill of interpleader presupposes that the stakeholder or fundholder has in his possession a certain definite amount in money or funds, concerning the ownership of or right to which there is a controversy among other persons; that he is impartial as between the parties and desires to dispose of the fund without trouble or expense to himself and therefore files his bill offering to bring the fund into court, and asking that the parties who are claiming the same as against each other, be required to litigate their claims at their own expense, and relieve him from further care or trouble in reference to the matter. Centralia v. Norton, 140 Ill. App. 49.

One in which the person exhibiting it claims no right in opposition to the rights claimed by the person against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons, for the safety of the person exhibiting the bill. 24 Barb. (N. Y.) 154; 19 Ga. 513.

A bill exhibited by one who, not knowing to whom he ought of right to render a debt or duty, fears he may be hurt by some of the claimants, and therefore prays he may interplead, so that the court may judge to whom the thing belongs, and he be thereby safe on the payment. 2 Paige, Ch. (N. Y.) 199, 570; 3 Johns, Ch. (N. Y.) 445; 3 Jones (N. C.) 83.

BILL OF LADING.

A written acknowledgment by the master of a ship, or the representative of any common carrier, that he has received the goods therein described, for the voyage or journey stated, to be carried upon the terms, and delivered to the person therein specified. Illinois C. R. Co. v. Miller, 32 Ill. App. 269.

A written acknowledgment of the receipt of certain goods and an agreement for a consideration to transport and deliver the same at a specified place to a person therein named or his order; a memorandum or acknowledgment in writing, signed by the agent of a common carrier that it has received in good order, at the place therein mentioned, certain goods therein specified, which it prom-

ises to deliver in like good order at the place therein appointed for the delivery of the same, to the consignee therein named, or to his assigns, he or they paying freight for the same. Ingram v. American, etc., Co., 162 Ill. App. 481.

Delivery Ticket Compared.

The only difference between a bill of lading and a delivery ticket is that in the former the goods may have not have started on their destination, while in the latter the purport of the ticket is that they have already arrived, ready to be delivered to the holder of the ticket. Webster v. Granger, 78 Ill. 232.

Both Contract and Receipt.

A written acknowledgment of the receipt of goods and also an agreement for a consideration to transport and deliver the same at the specified place to a person therein named, or his order, having the two-fold character of a receipt and an agreement. Illinois, etc., Co. v. Chicago, R. I. & P. R. Co., 250 Ill. 402; Lake Shore & M. S. R. Co. v. Live Stock Bank, 178 Ill. 518; Merchants, etc., Co. v. Furthmann, 149 Ill. 73; W. A. Fraser Co. v. Chicago, B. & Q. R. Co., 189 Ill. App. 103; Idaho, etc., Co. v. Oregon, S. L. R. Co., 188 Ill App. 597; Ingram v. American, etc., Co., 162 Ill. App. 481; Illinois C. R. Co. v. Miller, 32 Ill. App. 269.

BILL OF MIDDLESEX.

An old form of process similar to a capias, issued out of the court of kings bench in personal actions, directed to the sheriff of the county of Middlesex (hence the name), and commanding him to take the defendant and have him before the king at Westminster on a day named, to answer the plaintiff's complaint.

Once, when the court sat at Oxford, it was termed a "Bill of Oxfordshire." 3 Steph. Comm. 404, note (1). It was abolished by St. 2 Wm. IV. c. 39.

BILL OF PAINS AND PENALTIES.

A special act of the legislature which inflicts a punishment less than death upon

persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. 2 Wooddeson, Lect. 625. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death. It has been thought by some that the clause in the constitution prohibiting bills of attainder includes bills of pains and penalties. 6 Cranch (U. S.) 138; Story, Const. § 1338.

BILL OF PARTICULARS.

Function.

The object of a bill of particulars is to inform the defendant of the claim or charge he is called upon to defend against, and its effect is to limit and restrain the plaintiff, on the trial, to the proof of the particular cause or causes of action therein mentioned. McKinnie v. Lane, 230 Ill. 548; Star Brewery v. Farnsworth, 172 Ill. 250; Waidner v. Pauly. 141 Ill. 445; McDonald v. People, 126 Ill. 161; Morton v. McClure, 22 Ill. 258; Cooke v. People, 134 Ill. App. 49; American, etc., Corporation v. Ohio, etc., Co., 120 Ill. App. 615; Sullivan v. People, 108 Ill. App. 338; O'Leary v. People, 88 Ill. App. 64.

When Part of Record.

A copy of a bill of particulars is not a part of the record unless preserved in a bill of exceptions. Star Brewery v. Farnsworth, 172 Ill. 250.

As Part of Declaration.

A bill of particulars has been treated as an amplification of the declaration. McDonald v. People, 126 Ill. 160; Cooke v. People, 134 Ill. App. 49; Sullivan v. People, 108 Ill. App. 338; O'Leary v. People, 88 Ill. App. 64.

BILL OF PEACE.

One brought to restrain repeated attempts to litigate the same right. Bispham, Eq. § 415; Daniell, Ch. Pr. 1532.

BILL OF PRIVILEGE.

In English law. The form of proceeding against an attorney of the court, who is not liable to arrest. Brooke, Abr. "Bille;" 12 Mod. 163; 3 Bl. Comm. 289.

BILL OF PROOF.

In English practice. The claim made by a third person to the subject-matter in dispute between the parties to a suit in the court of the mayor of London. 2 Chit. Prac. 492: 1 Marsh. 233.

BILL OF REVIEW.

Defined.

One which is brought to have a decree in equity of the court reviewed, altered, or reversed. The object of the bill is to reverse the decree as far as it is erroneous, and to retry the cause. 69 Ala. 65.

As Writ of Error.

A bill of review, pure and simple, and as distinguished from a bill of review for newly discovered evidence or a bill in the nature of a bill of review, is in the nature of a writ of error, and it is brought for error of law apparent upon the face of the decree itself, the decree, for the purposes of the review, including not only the adjudication, but also the pleadings and the facts as found in the original cause. Allerton v. Hopkins, 160 Ill. 452; Griggs v. Gear, 8 Ill. 10; Mathias v. Mathias, 104 Ill. App. 346.

Creature of Equity.

A bill of review is the creation of a court of chancery, and has no application to other than chancery proceedings. Allerton v. Hopkins, 160 Ill. 452.

Function.

A bill of review based on newly discovered evidence is designed to accomplish the same purpose as a petition for a rehearing in chancery or a motion for a new trial at law. Watts v. Rice, 192 Ill. 126.

Classification.

Bills of review or bills in the nature of bills of review are for all practical pur-

poses divided into three general classes: bills for error appearing on the face of the decree, bills upon discovery of new matter, and bills based on allegations of fraud impeaching the original decree. Harrigan v. Peoria County, 262 Ill. 41.

Bill to Impeach for Fraud Compared.

A bill to impeach a former decree for fraud is very nearly akin to a bill of review, in that it may be filed at any time as a matter of right. Adamski v. Wieczorek, 170 Ill. 375; Griggs v. Gear, 8 Ill. 12.

BILL OF REVIVOR.

A bill in equity brought to continue a suit which has abated before its final consummation, as, for example, by death, or marriage of a female plaintiff. Story, Eq. Pl. § 20.

BILL OF REVIVOR AND SUPPLE-MENT.

In equity practice. One which is a compound of supplemental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill arising from subsequent events, so as to entitle the party to relief on the whole merits of his case. 5 Johns. Ch. (N. Y.) 334; Mitf. Ep. Pl. 32, 74.

BILL OF RIGHTS.

In constitutional law. A formal and public declaration or assertion in writing, of popular rights and liberties, usually expressed in the form of a statute, or promulgated on occasions of revolution, or the establishment of new forms of government, or new constitutions. The English statute of 1 Wm. & Mary, st. 2, c. 2, is denominated the "Bill of Rights." 1 Bl. Comm. 128. Several of the United States have incorporated formal bills of rights into their constitutions. See 2 Kent, Comm. 1-11.

BILL OF SIGHT.

A written description of goods, supposed to be inaccurate, but made as nearly exact as possible, furnished by an importer or his agent to the proper officer of the customs, to procure a landing and inspection of the goods. It is allowed by an English statute where the merchant is ignorant of the real quantity and quality of goods consigned to him, so as to be unable to make a proper entry of them. The entry must be perfected within three days after landing the goods. St. 3 & 4 Wm. IV. c. 52, § 24.

BILL OF STORE.

In English law. A kind of license granted at the custom house to merchants to carry such stores and provisions as are necessary for their voyage, custom free. Jacob.

BILL QUIA TIMET.

In equity practice. A remedy by bill in equity to protect rights against possible future injuries or impairment. One which is filed when a person is entitled to property of a personal nature after another's death, and has reason to apprehend it may be destroyed by the present possessor; or when he is apprehensive of being subjected to a future inconvenience, probable or even possible, to happen or be occasioned by the neglect, inadvertence, or culpability of another.

Upon a proper case being made out, the court will, in one case, secure the property for the use of the party (which is the object of the bill), by compelling the person in possession of it to give a proper security against any subsequent disposition or willful destruction, and, in the other case, they will quiet the party's apprehension of future inconvenience by removing the causes which may lead to it. 1 Madd. Ch. Pr. 218; Blake, Ch. Pr. 37, 47; 2 Story, Eq. Jur. §§ 825, 851. See 9 Grat. (Va.) 398; 11 Ga. 570; 8 Tex. 337; 2 Md. Ch. Dec. 157, 442; 4 Edw. Ch. (N. Y.) 228; Bouv. Inst.

BILL TO CARRY A DECREE INTO EXECUTION.

In equity practice. One which is filed when, from the neglect of parties, or some other cause, it may become impossible to carry a decree into execution without the further decree of the court. Hinde, Ch. Pr. 68.

BILL TO PERPETUATE TESTI-MONY.

In equity practice. One which is brought to secure the testimony of witnesses with reference to some matter which is not in litigation, but is liable to become so. It differs from a bill to take testimony de bene esse, inasmuch as the latter is sustainable only when there is a suit already depending. It is demurrable if it contain a prayer for relief. 1 Dickens, 98; 2 P. Wms. 162; 2 Ves. Jr. 497; 2 Madd. Ch. 37. And see 1 Schoales & L. 316.

BILL TO SUSPEND A DECREE.

In equity practice. One brought to avoid or suspend a decree under special circumstances. See 1 Ch. Cas. 3, 61; 2 Ch. Cas. 8; Mitf. Eq. Pl. 85, 86.

BILL TO TAKE TESTIMONY DE BENE ESSE.

In equity practice. One which is brought to take the testimony of witnesses to a fact material to the prosecution of a suit at law which is actually commenced, where there is good cause to fear that the testimony may otherwise be lost before the time of trial. See 1 Sim. & S. 83; 2 Story, Eq. Jur. § 1813, note.

It lies, in general, where witnesses are aged or infirm (Coop. Eq. Pl. 57; Ambl. 65; 13 Ves. 56, 261), propose to leave the country (2 Dickens, 454; Story, Eq. Pl. § 308), or there is but a single witness to a fact (1 P. Wms. 97; 2 Dickens, 648).

BILLA CASSETUR.

(Lat. that the bill be quashed or made void.) A plea in abatement concluded,

when the pleadings were in Latin, quod billa cassetur, that the bill be quashed. 3 Bl. Comm. 303; Graham, Prac. 611.

BILLED PRICES.

The prices at which goods are billed to a vendee. Danziger v. Pittsfield Shoe Co., 204 Ill. 153.

BILLS NOT ORIGINAL.

Bills which relate to some matter already litigated in the court by the same persons, and which are either an addition to or a continuance of an original bill, or both. Elzas v. Elzas, 183 Ill. 161.

BILLS OF CREDIT.

Federal Constitution.

Notes issued by a bank established and owned by the state, and intended to be a paper currency to circulate as money are "bills of credit" within the meaning of paragraph 1 of section 10 of article 1 of the Constitution of the United States. Linn v. State Bank, 2 Ill. 94.

The expression "bills of credit," used in paragraph 1 of section 10 of article 1 of the Constitution of the United States, signifies a paper medium intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society. Linn v. State Bank, 2 Ill. 91.

BIRTH.

The act of being wholly brought into the world.

The conditions of live birth are not satisfied when a part only of the body is born. The whole body must be brought into the world, and detached from that of the mother, and after this event the child must be alive. 5 Car. & P. 329; 7 Car. & P. 814. The circulating system must also be changed, and the child must have an independent circulation. 5 Car. & P. 539; 9 Car. & P. 154. But it is not necessary that there should have been a separation of the umbilical cord. That may still connect the child with its mother,

and yet the killing of it will constitute murder. 7 Car. & P. 814; 9 Car. & P. 25. See 1 Beck, Med. Jour. 478; 1 Chit. Med. Jour. 438.

BISANTIUM, BESANTINE, OR BEZANT.

An ancient coin, first issued at Constantinople. It was of two sorts—gold, equivalent to a ducat, valued at 9s. 6d., and silver, computed at 2s. They were both current in England. Wharton,

BISSEXTILE.

The day which is added every fourth year to the month of February, in order to make the year agree with the course of the sun.

It was called "bissextile" because in the Roman calendar it was fixed on the sixth day before the calends of March (which answers to the twenty-fourth day of February), and this day was counted twice. The first was called bissextus prior, and the other bissextus posterior, but the latter was properly called "bissextile" or "intercalary" day.

BI-SULPHIDE OF CARBON.

A fluid which when exposed to the atmosphere generates a highly explosive gas. Decatur, etc., Co. v. Boland, 95 Ill. App. 602.

BITCH.

Adultery or Fornication not Imported.

The word "bitch," when applied to a woman, does not in its common acceptance import fornication or adultery. Roby v. Murphy, 27 Ill. App. 398.

BLACK ACT.

In English law. The act of parliament 9 Geo. II. c. 22. This act was passed for the punishment of certain marauders, who committed great outrages disguised and with faces blackened. It was repealed by 7 & 8 Geo. IV. c. 11. See 4 Bl. Comm. 245.

BLACK ACTS.

Old Scotch statutes passed in the reigns of the Stuarts, and down to the year 1586 or 1587. So called because printed in black letter. Bell. Dict.; Wharton.

BLACK BOOK OF THE ADMIR-ALTY.

An ancient book compiled in the reign It has always been of Edward III. deemed of the highest authority in matters concerning the admiralty. It contains the laws of Oleron, at large, a view of the crimes and offenses cognizable in the admiralty, ordinances and commentaries on matters of prize and maritime torts, injuries, and contracts. 2 Gall. (U. S.) 404. It is said by Selden to be not more ancient than the reign of Henry Selden, de Laud. Leg. Ang. c. 32. By other writers it is said to have been composed earlier.

BLADA.

Growing crops of grain. Any annual crop. Cowell. Used of crops, either growing or gathered. Reg. Orig. 94b; Coke, 2d Inst. 81.

BLANCH HOLDING.

In Scotch law. A tenure by which land is held. The duty is generally a trifling one, as a peppercorn. It may happen, however, that the duty is of greater value, and then the distinction received in practice is founded on the nature of the duty. Stair, Inst. sec. iii. lib. 3, § 33. See Paterson, Comp. 15; 2 Sharswood, Bl. Comm. 42.

BLANKET COMPLAINT.

Ordinance.

A complaint charging a violation of section 2012 of the Revised Municipal Code of Chicago in that defendant "did make, aid, countenance, and assist in making an improper noise, riot, disturbance, breach of the peace and diversion tending to a breach of the peace," charges | fund." The expression is chiefly used in

but a single offense and is not a blanket complaint. Chicago v. Smith, 195 Ill. App. 350.

BLANKET POLICY.

A fire insurance policy not on particular goods, but on whatever there may be at a certain time, of a varying quantity, as on a stock of goods subject to sale and replenishing. See 93 U.S. 541.

BLASPHEMY.

In criminal law. To attribute to God that which is contrary to his nature, and does not belong to him, and to deny what A false reflection uttered with a malicious design of reviling God. lyn's Pref. to 8 St. Tr.

To willfully revile the Deity or sacred things.

Malicious reproach of God, his name, attributes, or religion. 2 Bish. Crim. Law,

In general, blasphemy may be described as consisting in speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God. It is purposely using words concerning God calculated and designed to impair and destroy the reverence, respect, and confidence due to him as the intelligent creator, governor, and judge of the world. It embraces the idea of detraction, when used towards the Supreme Being; as "calumny" usually carries the same idea when applied to an individual. It is a willful and malicious attempt to lessen men's reverence of God by denying his existence, or his attributes as an intelligent creator, governor, and judge of men, and to prevent their having confidence in him as such. 20 Pick. (Mass.) 211, 212, per Shaw, C. J.

BLENDED FUND.

In England, where a testator directs his real and personal estate to be sold, and disposes of the proceeds as forming one aggregate, this is called a "blended cases where part of the testator's disposition fails, by lapse or otherwise, so that it becomes a question whether so much of the undisposed-of portion as consists of or arises from land goes to the testator's heir at law or next of kin. 1 Brown, 503; 1 White & T. Lead. Cas. 783; 1 Mylne & K. 665.

BLOCK.

A square or portion of a city enclosed by streets, whether occupied by buildings or not. Harrison v. People, 195 Ill. 470.

A square or portion of a city enclosed by streets, whether occupied by buildings or composed of vacant lots. The distance along a street from one cross-street to another. Harrison v. People, 97 Ill. App. 470.

The word "block," used with reference to land, is synonymous with "square," and means the territory bounded by four streets. Harrison v. People, 195 Ill. 470. To the same effect see Chicago v. Stratton, 162 Ill. 501; Todd v. Kankakee & I. R. R. Co., 78 Ill. 532. But see Patterson v. Johnson, 214 Ill. 492, where it was held that such was not invariably the meaning of the word.

The word "block" may mean the part of a street which lies between two cross-streets. Patterson v. Johnson, 214 Ill. 492.

BLOCKADE.

Blockade is where a belligerent power maintains such a naval force near the shore or ports of the other belligerent as to prevent access to them, or, as it is sometimes put, the vessels must be so disposed that there is an evident danger in entering the port, or approaching the shore, notwithstanding that the blockading squadron may be accidentally absent for a time, e. g., from being blown off by the wind. Under the Declaration of Paris (q. v.), a blockade is not effective unless maintained by an adequate force.

A blockade de facto is where the blockade has not been notified, as is usually done) by the belligerent to neutral governments, so that every approaching vessel has to be warned off by the squadron.

Vessels attempting to pass a blockade are liable to confiscation.

It is not necessary that the place should be invested by land as well as by sea; but a blockade by sea, does not impair the right of neutrals to carry on a trade by land. 1 Kent, Comm. 147.

BLOOD.

Relationship; stock; family. 1 Rop. Leg. 103; 1 Belt, Supp. Ves. 365. Kindred. Bac. Max. reg. 18.

Brothers and sisters are said to be of the whole blood if they have the same father and mother, and of the half-blood if they have only one parent in common. 5 Whart. (Pa.) 477.

BLOOMINGTON.

A trust deed requiring publication of a notice of sale in a newspaper published in McLean County is complied with by a certificate showing that such publication was made in a newspaper published in "Bloomington," it appearing from the copy of the advertisement, which was annexed to the certificate, that the place referred to as "Bloomington" was in fact Bloomington, Illinois. White v. Bates, 234 Ill. 283.

BLUNT INSTRUMENT.

An indictment for murder charging that the killing was with a "blunt instrument" is sustained by evidence that the skull of the deceased was fractured by external violence—to a blow on the skull with a stick, butt of a gun, gas pipe or anything like that. People v. Lukoszus, 242 Ill. 106.

BOARD.

A body of men constituting a quorum; a court or council, as, a board of trustees, a board of officers, etc. Broadwell v. Peuple, 76 Ill. 557.

BOARDER.

One who, by a special contract, obtains food, with or without lodging, in the house

of another. To be distinguished from a guest (q. v.). Story, Bailm. § 477; 26 Vt. 343; 26 Ala. (N. S.) 371; 7 Cush. (Mass.) 417.

BOARDING HOUSE.

A quasi public house where boarders are habitually kept, and which is held out and known as a place of entertainment of that kind. 1 Lans. (N. Y.) 484, 486; 8 Abb. Pr. (N. S.; N. Y.) 26. The characteristic of a boarding house is that accommodation is furnished for a definite period. 24 How. Pr. (N. Y.) 62.

BOC LAND.

Allodial lands held by written evidence of title. Such lands might be granted upon such terms as the owner should see fit, by greater or less estate, to take effect presently, or at a future time, or on the happening of any event. In this respect they differed essentially from feuds. 1 Washb. Real Prop. 17; 4 Kent, Comm. 441.

BOCERAS.

(Saxon.) A scribe, notary, or chancellor among the Saxons. Crabb, Hist. Eng. Law, 28; Barr. Obs. St. 404, note (1).

BODILY HEIRS.

While at common law a conveyance or devise to one and his "bodily heirs" created an estate in fee tail general, such words under section 6 of the Conveyances Act. (J. & A. ¶ 2237) passes only an estate for the natural life of the grantee, with remainder in fee simple absolute to the persons to whom the estate tail would first pass, at common law, on the death of the grantee. Turner v. Hause, 199 Ill. 470; Kyner v. Boll, 182 Ill. 176; Dinwiddie v. Self, 145 Ill. 300.

The expression "bodily heirs," when used in a conveyance or devise of real estate, has no other or different meaning than the words "heirs of his body." Turner v. Hause, 199 Ill. 470.

BODY.

The entire physical part of a man. Elgin, etc., Co. v. Wilson, 217 Ill. 54.

The human body, the whole man. Elgin, etc., Co. v. Wilson, 120 Ill. App. 377.

Used of a natural body, or of an artificial one created by law, as a corporation. The main part or frame of anything, as distinguished from its subordinate parts. 22 N. Y. 147; 5 Mason (U. S.) 300. A collection of individuals united for a common purpose. See 23 Wend. (N. Y.) 141.

Limbs Included.

There is no variance between a declaration in an action for personal injuries that bones in plaintiff's "body" were broken and proof that she suffered a fracture of the tibia of the left leg and an injury to the right elbow. Elgin, etc., Co. v. Wilson, 217 Ill. 54.

BODY OF THE COUNTY.

A county at large, as distinguished from any particular place within it. See 25 Wis. 364.

Blackstone's Definition.

Under the common law, in both civil and criminal cases, the jury were to be taken from the visne or neighborhood,—from among the neighbors and equals of the litigants or the accused,—and by long usage this came to mean from the body of the county. Chicago v. Knobel, 232 Ill. 114. To the same effect see Watt v. People, 126 Ill. 16.

BODY POLITIC.

The term "body politic" in section 104 of the Illinois Criminal Code (I. & A., ¶ 3662), providing for the punishment of the offense of doing "any act in the course of any suit, proceeding or prosecution, whereby any person or body politic may be injured in any event, or his rights or interests may in any manner be affected," includes the State of Illinois in its sovereign, corporate capacity. People v. Snyder, 279 Ill. 435.

BONA FIDE PURCHASER.

One without notice of a prior claim or incumbrance. Guard v. Rowan, 2'Scam. 501; Watt v. Scofield, 76 Ill. 263; Guard v. Rowan, 3 Ill. 501.

One who pays a valuable consideration and takes the conveyance without notice of any equitable claim against the property conveyed. Friedman v. Verchofsky, 105 Ill. App. 424.

A conveyance of real or personal property as security for an antecedent debt does not, upon principle, render the transferee a bona fide purchaser, since the creditor parts with no value, surrenders no right and places himself in no worse legal position that before. The rule has been settled, therefore, in very many states, that such a transfer is not made upon a valuable consideration, within the meaning of the doctrine of bona fide purchaser.

In order to constitute a bona fide purchaser he must part with something valuable at the time or in some way place himself in a worse condition than he was before. It is not sufficient if he took the property in consideration of a precedent debt.

To constitute a bona fide purchaser for a valuable consideration, within the meaning of the Recording Act, he must, before he had notice of the prior equity of the holder of an unrecorded mortgage, have advanced a new consideration for the estate conveyed or have relinquished some security for a pre-existing debt due him. The mere receiving a conveyance in payment of a pre-existing debt is not sufficient.

When rights of third persons intervene in this class of cases they are to be upheld if those persons purchased the property absolutely and parted with a new and valuable consideration for it without notice of any fraud. But if they have notice of the fraud or give no new valuable consideration or are mere mortgagees, pawnees or assignees in trust for the debtor or for him and others, such third persons are to be regarded as holding the goods open to the same equities and exceptions as to title as they were open to

in the hands of the mortgagor, pawner or assignor. Sparrow v. Wilcox, 272 Ill. 639-640.

BONA VACANTIA.

Goods to which no one claims a property, as shipwrecks, treasure trove, etc.; vacant goods. These bona vacantia belonged, under the common law, to the finder, except in certain instances, when they were the property of the king. 1 Sharswood, Bl. Comm. 298, note.

BONA WAVIATA.

Goods waived or thrown away by a thief in his fright for fear of being apprehended. Such goods belong to the sovereign. 1 Bl. Comm. 296.

BOND.

A bond is a deed. Chilton v. People, 66 Ill. 503.

A sealed obligation to pay money, either absolutely or conditionally. 2 Serg. & R. (Pa.) 502; 11 Ala. 19; 1 Harp. (S. C.) 434; 1 Blackf. (Ind.) 241; 6 Vt. 40; 1 Baldw. (U. S.) 129; 110 Mass. 454.

It may be single,—simplex obligatio, as where the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to another at a day named, or it may be conditional (which is the kind more generally used), that if the obligor does some particular act, the obligation shall be void, or else shall remain in full force, as payment of rent, performance of covenants in a deed, or repayment of a principal sum of money borrowed of the obligee, with interest, which principal sum is usually one-half of the penal sum specified in the bond. The term is usually applied only to the latter class. 3 Redf. Sur. (N. Y.) 459.

Imports Specialty.

The word "bond," ex vi termini, imports a sealed instrument. Chilton v. People, 66 Ill. 503.

Penal.

A deed whereby the obligor or person bound obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. If the bond be without a condition, it is called a single one; but there is generally a condition added, that if the obligor does some particular act, the obligation shall be void, or else shall remain in full force. The principal sum is usually one-half of the penal sum specified in the bond. 1 Tomlin's Law Dict. 257. Shattuck et al v. The People, 5 Ill. 483, 484. Young, J., dis. op.

BOND FOR A DEED.

An agreement to make title in the future. National, etc., Co. v. Three States, etc., Co., 217 Ill. 122; Langlois v. Stewart, 156 Ill. 612.

BONDSMAN.

A surety; one who is bound or gives security for another; one who is bound by a writing obligatory for the performance of the act of another; a surety. Haberstich v. Elliott, 189 Ill. 74.

Will-Sealed Instrument not Imported.

A will providing for the deduction from the share of a devisee of an amount for which testator was liable as one of the devisee's "bondsmen" does not of necessity import, by the quoted word, that the liability referred to was evidenced by an instrument under seal, but merely implies that testator was surety for the devisee for the payment of an obligation of such devisee. Haberstich v. Elliott, 189 Ill. 74.

BONUS.

A premium paid to a grantor or vendor.

A consideration given for what is received. Extraordinary profit accruing in the operations of a stock company or private corporation. 10 Ves. 185; 7 Sim. 634; 2 Spence, Eq. Jur. 569.

An additional premium paid for the use of money beyond the legal interest. 2 Pars. Cont. 391.

In its original sense of "good," the word

was formerly much used. Thus, a jury was to be composed of twelve good men (boni homines) (3 Bl. Comm. 349), bonus judex (a good judge) (Co. Litt. 246).

BOOK.

A general name given to every literary composition which is printed, but appropriately to a printed composition bound in a volume. A book may consist of but one page, and need not be bound. 2 Campb. 30, 32.

BOOTY.

Personal property captured by a public enemy on land, in contradistinction to "prize," which is such property captured by such an enemy on the sea. booty has been in complete possession of the enemy for twenty-four hours, it becomes absolutely his, without any right of postliminy in favor of the original owner, particularly when it has passed bona fide into the hands of a neutral. 1 Kent. Comm. 110. The right to the booty, Pothier says, belongs to the sovereign; but sometimes the right of the sovereign, or of the public, is transferred to the soldiers, to encourage them. Poth. Dr. de Propriete, p. 1, c. 2, a. 1, § 2; 2 Burlam, Nat. Law, pt. 4, c. 7, note 12.

BORDARII, OR BORDIMANNI.

In old English law. Tenants of a less servile condition than the villani, who had a bord or cottage, with a small parcel of land, allowed to them, on condition they should supply the lord with poultry and eggs, and other small provisions for his board or entertainment. Spelman.

BORDBRIGCH, BORGHBRECH, OR BURGHBRECH.

In Saxon law. Breach or violation of pledge (fide jussionis violatio); pledgebreach (plegii fractio). Spelman. The offense of violating the borg, or pledge given by the inhabitants of a tithing. See "Borg."

BORDER WARRANT.

A process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security, judicio sisti. Bell, Dict.

BORG.

(Saxon.) Suretyship. Borgbriche (violation of a pledge or suretyship) was a fine imposed on the borg for property stolen within its limits. A tithing in which each one became a surety for the others for their good behavior. Spelman; Cowell; 1 Bl. Comm. 115.

BORGH OF HAMHALD.

In old Scotch law. A pledge or surety given by the seller of goods to the buyer, to make the goods forthcoming as his own proper goods, and to warrant the same to him. Skene de Verb. Sign.

BOROUGH.

In the old sense of the word, borough is "an ancient towne, holden of the king or any other lord, which sendeth burgesses to the parliament." Litt. § 164; Co. Litt. 109a. Many of these boroughs. however, having been disfranchised in modern times, are now only boroughs to this extent, that the land within them is held by tenure in burgage or subject to the custom of borough English (q. v.). At the present day, "borough" almost always means either a borough corporate, or municipal borough, or a parliamentary borough (see 1 Bl. Comm. 115; 1 Steph. Comm. 125), most, if not all, municipal boroughs being also parliamentary.

A parliamentary borough is a town which returns one or more members to parliament. See Parliamentary and Municipal Registration Act 1878, § 4. Some of these towns are ancient boroughs; others are towns on which the right of returning members has been conferred by statute. St. 2 Wm. IV. c. 45; 30 & 31 Vict. c. 102.

In Scotch Law.

A corporation organized under a royal charter. Bell, Dict.

BOROUGH ENGLISH.

A custom prevalent in some parts of England, by which the younger son inherits the estate in preference to his older brothers. 1 Bl. Comm. 75.

The custom is said by Blackstone to have been derived from the Saxons, and to have been so called in distinction from the Norman rule of descent. 2 Bl. Comm. 83. A reason for the custom is found in the fact that the elder children were usually provided for during the life of the parent as they grew up, and removed, while the younger son usually remained. See, also, Bac. Abr.; Comyn, Dig.; Termes de la Ley; Cowell. The custom applies to socage lands. 2 Bl. Comm. 83.

BORROW.

To obtain the use of the property of another, with an agreement to return the same, ordinarily in specie, but where, as in case of money, the nature of the case does not admit of it, to return in kind. See 14 Neb. 381.

BORROWER.

He to whom a thing is lent at his request.

As used in usury laws, it includes any person who is a party to the original contract or in any way liable to pay the loan. 64 N. Y. 247; 65 N. Y. 432; 11 Wend. (N. Y.) 329; 7 Hill (N. Y.) 391; 75 N. Y. 516, 523, 31 Am. Rep. 484, reversing 10 Hun. 468.

In general he has the right to use the thing borrowed, himself, during the time and for the purpose intended between the parties. He is bound to take extraordinary care of the thing borrowed; to use it according to the intention of the lender; to restore it in proper condition at the proper time. See "Bailment;" Story, Bailm. § 268; 2 Kent, Comm. 446-449; 1 Bouv. Inst. 1078-1090.

BOTH.

The one and the other; the two; the pair or couple; without exception of either. Kuehner v. Freeport, 143 Ill. 104.

Limited to Two.

The term is never used as inclusive of or as referring to three or more, and can apply only to two of the matters or subjects previously mentioned. Kuehner v. Freeport, 143 Ill. 103.

BOTH SIDES OF ITS ROAD.

Railroads and Warehouses Act.

Section I of the act of 1874 (J. & A. ¶8811), requiring railroad companies to maintain fences on "both sides of its road," requires such fences to be maintained on the line between its right of way and the land of the abutters on each side, the intention of the legislature being to compel the railroad to embrace the right of way by such fences, hence a fence ten feet inside the line of the right of way is not a compliance with the statute. Ohio & M. R. Co. v. People, 121 Ill. 490.

BOTTOMRY.

A contract in the nature of a mortgage, by which the owner of a ship, or a master, as his agent, borrows money for the use of the ship, and for a specified voyage, or for a definite period, pledges the ship (or the keel or bottom of the ship, pars pro toto) as a security for its payment, with maritime or extraordinary interest on account of the marine risks to be borne by the lender; it being stipulated that if the ship be lost in the course of the specifled voyage, or during the limited time, by any of the perils enumerated in the contract, the lender shall also lose his money. 2 Hagg. Adm. 48, 53; 2 Sumn. (U.S.) 157; Abb. Shipp. 117-131. Where the loan is made on the credit of the cargo alone the contract is called respondentia (q. v.)

BOUGHT AND SOLD NOTES.

Written memoranda of a sale of goods, delivered to the parties thereto by the

broker employed to negotiate the sale. Eau Claire, etc., Co. v. Western, etc., Co., 213 Ill. 582.

These notes are not the contract itself, but are memoranda only, advising the parties of the contract as made. Eau Claire, etc., Co. v. Western, etc., Co., 115 Ill. App. 76.

BOUGHT NOTE.

A note of the sale given to the seller by a broker employed to buy goods, in his own name, and as the agent of both buyer and seller, whereby they are respectively bound, if he has not exceeded his authority. Murray v. Doud, 167 Ill. 372; Saladin v. Mitchell, 45 Ill. 83; East St. Louis v. Brenner, 59 Ill. App. 608.

BOULEVARD.

A public street which is usually of greater width than ordinary business streets and is given a park-like appearance by reserving spaces at the sides or center for shade trees, flowers, seats, and the like, and ordinarily is not used for heavy teaming, but is usually set apart for pleasure driving rather than the general business purposes of an ordinary street. Haller, etc., Works v. Physical, etc., School, 249 Ill. 442.

A public drive, adapted and set aside for purposes of ornament, exercise, and amusement. It is not technically a street, avenue, or highway, though a carriage way over it be a chief feature. 52 How. Pr. (N. Y.) 440.

Derivation.

Originally "boulevard" was a bulwark or rampart of a fortification or fortified town; hence, a public walk or street occupying the site of demolished fortifications, the name being now sometimes extended to any street or walk encircling a town, and also to a street which is of especial width, is given a park-like appearance by reserving spaces at the sides or center for shade trees, flowers, seats, and the like, and is not used for heavy teaming. West Chicago, etc., Commissioners v. Farber, 171 Ill. 160.

A broad street, promenade or walk, planted with rows of trees; a broad promenade or street; a public walk or street occupying the site of demolished fortifications; hence, a broad avenue in or around a city; a broad city avenue specially designed for pleasure walking or driving, generally planted with trees, often in the center. West Chicago, etc., Comrs. v. Farber, 171 Ill. 160.

BOULEVARD OR PLEASURE WAY.

Parks Act.

The expression "boulevard or pleasure way," used in section 8 of the act of 1873, relating to connecting parks in two or more towns, has no reference to established streets, but refers solely to streets to be laid out and opened by the commissioners, for the purposes indicated, over lands to be acquired for that purpose. Kreigh v. Chicago, 86 Ill. 411.

BOUNDARY.

A meander line is not a boundary line. People v. Economy, etc., Co., 241 Ill. 319; Peoria v. Central, etc., Bank, 224 Ill. 51; Houck v. Yates, 82 Ill. 182; trustees Illinois & Michigan Canal v. Haven, 10 Ill. 558; Middleton v. Pritchard, 4 Ill. 522.

Any separation, natural or artificial, which marks the confines or line of two contiguous estates. Hunt, Boundaries.

BOURGEOIS.

In old French law. The inhabitants of a bourg (q. v.) Steph. Lect. 118.

A person entitled to the privileges of a municipal corporation; a burgess. Id.

BOVATA TERRAE.

As much land as one ox can cultivate. Said by some to be thirteen, by others eighteen, acres in extent. Skene de Verb. Sign.; Spelman; Co. Litt. 5a.

BOW-BEARER.

An under officer of the forest whose duty it is to oversee and true inquisition

make, as well of sworn men as unsworn, in every bailiwick of the forest, and of all manner of trespasses done, either to vert or venison, and cause them to be presented, without any concealment, in the next court of attachment, etc. Cromp. Jur. 201.

BOYCOTT.

A conspiracy to injure the business of any person by inducing others to abstain from business relations with him. The methods are so diverse as not to be comprehended by any definition. For illustrations, see 84 Va. 927; 45 Fed. 135; 55 Conn. 79.

If force or intimidation is resorted to, such combinations are unlawful. As to their legality in the absence of such measures. See 15 Q. B. Div. 476.

BRACKET.

Trade Expression.

The term "bracket" is used in the glass trade to designate an imaginary line. James H. Rice Co. v. Penn, etc., Co., 117 Ill. App. 361.

BRAIN.

That mass of matter through and by which that mysterious power, the mind, acts, and where the mind is supposed to be enthroned, acting through separate and distinct organs. Hopps v. People, 31 Ill. 390.

BRANCH.

A portion of the descendants of a person, who trace their descent to some common ancestor, who is himself a descendant of such person. The whole of a genealogy is often called the "genealogical tree," and sometimes it is made to take the form of a tree which is in the first place divided into as many branches as there are children, afterwards into as many branches as there are grandchildren, then great-grandchildren, etc. If, for example, it be desired to form the genealogical tree of Peter's family, Peter

will be made the trunk of the tree; if he has had two children, John and James, their names will be written on the first two branches, which will themselves shoot out into as many smaller branches as John and James have children; from these others proceed till the whole family is represented on the tree. Thus the origin, the application, and the use of the word "branch" in genealogy will be at once perceived.

BRANKS.

An instrument of punishment formerly made use of in some parts of England for the correction of scolds, which it was said to do so effectually and so very safely that it was looked upon by Dr. Plotts, in his History of Staffordshire (page 389), "as much to be preferred to the duckingstool, which not only endangered the health of the party, but also gives the tongue liberty 'twixt every dip to neither of which is this liable. It brings such a bridle for the tongue as not only quite deprives them of speech, but brings shame for the transgression and humiliation thereupon before it is taken off."

BRASS KNUCKLES, OR KNUCKS.

A weapon consisting of metal covering part of the hand and used to strike with. It was originally made of brass, and the name is now used as that of the weapon, without regard to the metal used. 3 Lea (Tenn.) 575; 3 S. W. 477.

BRAWL.

Tumult; loud angry contention. See 42 N. H. 464.

Originally used in connection with disturbances in churches or churchyards. 4 Bl. Comm. 146; Steph. Cr. Dig. 102.

BREACH.

The violation of an obligation, engagement, or duty. Breach may be either by renunciation,—that is, by the declaration of the party that he does not intend to perform (32 Iowa 409; 61 N. Y. 362;

52 Wis. 240), by such acts as will render performance impossible (82 N. Y. 108; 22 Fed. 522; 16 Mass. 161),—or by actually failing to perform any or all the terms of the contract; the two first mentioned being constructive breaches, and the last, actual breach.

A continuing breach is one where the condition of things constituting a breach continues during a period of time, or where the acts constituting a breach are repeated at brief intervals. F. Moore, 242; 1 Leon. 62; 1 Salk. 141; Holt, 178; 2 Ld. Raym. 1125.

BREACH OF CLOSE.

Every unwarrantable entry upon the soil of another is a breach of his close. 3 Bl. Comm. 209.

BREACH OF COVENANT.

A violation of, or a failure to perform the conditions of, a bond or covenant. The remedy is in some cases by a writ of covenant; in others, by an action of debt. 3 Bl. Comm. 156.

BREACH OF PRISON.

An unlawful breaking out of prison. This is of itself a misdemeanor. 1 Russ. Crimes, 378; 4 Bl. Comm. 129; 2 Hawk. P. C. c. 18, § 1; 7 Conn. 752. The remedy for this offense is by indictment. The climbing of a wall is not a breaking out, but if loose bricks be thrown from the wall it is. Russ. & R. 458. See "Escape."

BREACH OF THE PEACE.

A violation of public order; the offense of disturbing the public peace. 6 Coldw. (Tenn.) 283. An act of public indecorum is also a breach of the peace.

BREAKING.

Parting or dividing, by force and violence, a solid substance, or piercing penetrating, or bursting through the same.

In cases of burglary and housebreak-

ing, the removal of any part of the house, or of the fastenings provided to secure it, with violence and a felonious intent, is a breaking, as the raising of a closed window (107 N. C. 905), or the opening of a closed door (68 Ill. 271; 20 Iowa, 413), but an entry by an open door or window (85 Pa. St. 66; 25 Neb. 780) is not, though an entry through a chimney is a breaking into the house, for that is as much closed as the nature of things will permit (52 Ala. 376; 13 Ired. [N. C.] 244).

A constructive breaking is the procuring of an entry for felonious purpose by fraud or covin as by pretending to have business with the owner (9 Ired. [N. C.] 463), or by collusion with an inmate (98 N. C. 629).

BREHON LAW.

The ancient system of Irish law; so named from the judges, called "Brehons," or "Breitheamhuin." Its existence has been traced from the earliest period of Irish history down to the time of the Anglo-Norman invasion. It is still a subject of antiquarian research. An outline of the system will be found in Knight's English Cyclopaedia.

BRETTS AND SCOTTS, LAWS OF THE.

A code or system of laws in use among the Celtic tribes of Scotland down to the beginning of the fourteenth century, and then abolished by Edward I. of England. A fragment only is now extant. See Acts Parl. Scotland, vol. 1, pp. 299-301, Edin. 1844. It is interesting, like the Brehon laws of Ireland, in a historical point of view.

BREVE.

(Law Lat.) In old English law. A writ; properly an original writ (breve originale), by which all actions in the superior courts of England were once required to be commenced. Non potest quis sine brevi agere, no man can sue without a writ. Bracton, fols, 413b, 112;

Fleta, lib. 2, c. 13, § 4; Steph. Pl. 5, 6; 3 Bl. Comm. 272, 273.

BREVE TESTATUM.

A written memorandum introduced to perpetuate the tenor of the conveyance and investiture of lands. 2 Bl. Comm. 307. It was prepared after the transaction, and depended for its validity upon the testimony of witnesses, as it was not sealed. Spelman.

In Scotch Law.

A similar memorandum made out at the time of the transfer, attested by the pares curiae, and by the seal of the superior. Bell, Dict.

BREVIA MAGISTRALIA.

Writs framed and issued by masters in chancery, not following any established form, but varying in accordance with the peculiarities of the particular case. Bracton. 413b.

BREVIARIUM ALARICIANUM, (OR ANIANI).

(Lat.) A code of law compiled by order of Alaric II., king of the Visigoths, for the use of the Romans living in his empire, published A. D. 506. It was collected by a committee of sixteen Roman lawyers, from the Codex Gregorianus, Hermogenianus, and Theodosianus, some of the later novels, and the writings of Gaius, Paulus, and Papinianus. In the middle ages, it is commonly referred to, under the titles Corpus Theodosianum, Lex Theodosiana, Liber Legum, or Lex Romana. 1 Mackeld. Civ. Law, p. 49, § 59.

BRIBERY.

At Common Law.

The receiving or offering any undue reward by or to any person whatever whose ordinary profession or business relates to the administration of public justice, in order to influence his behavior in office, and incline him to act contrary to the known rules of honesty and integrity. Scott J. dissenting opinion Walsh v. People, 65 Ill. 65.

Wide Sense.

In an extended and enlarged sense bribery may be committed by any person in an official situation who shall corruptly use the power and interest of his place for rewards and promises, and by any person who shall give or offer or take a reward for offices of a public nature. Scott J. dissenting opinion Walsh v. People, 65 Ill. 65.

BRICK.

Ordinance.

An ordinance prescribing the material to be used in an improvement as "brick" implies, by the quoted word, brick of the ordinary dimensions, usually of eight inches in length, four inches in width, and two inches in thickness, and of the best quality for that particular structure. Peters v. Chicago, 192 Ill. 439.

BRIDGE.

A structure erected over a river, creek, stream, ditch, ravine, or other place, to facilitate the passage thereof; including, by the term, both arches and abutments. 3 Har. (N. J.) 108; 15 Vt. 438.

The common-law definition flumen vel cursus aquae, etc., has a more enlarged significance in modern usage, and the term "bridge" in statutes signifies also crossings over public ways on land. 37 Me. 451.

Bridges are either public or private. Public bridges are such as form a part of the highway, common according to their character, as foot, horse, or carriage bridges, to the public generally, with or without toll (2 East, 342); though their use may be limited to particular occasions as to seasons of flood or frost (2 Maule & S. 262; 4 Campb. 189).

Abutments and Approaches Included.

Under the common law, and usually under the statutes in this country, a bridge includes the abutments and ap-

proaches, which make it accessible and convenient for public travel. People v. Chicago & N. W. R. Co., 249 Ill. 173; State v. Illinois C. R. Co., 246 Ill. 286; Chicago v. Pittsburg Ft. W. & C. R. Co., 247 Ill. 322.

Roads and Bridges Act.

The word "bridge," used in section 110 of the act of 1879, now, as amended by later acts, section 19 of the Roads and Bridges Act (J. & A. ¶ 9646), relating to county aid to townships in building bridges, is controlled by subdivision 3 of section 1 of the Statutes Act (J. & A. ¶ 11102), providing that in statutes words importing the singular number may extend to several persons or things, so that the quoted word may include more than one bridge. Mercer County v. New Boston, 13 Ill. App. 276.

County Board Levy.

A levy of taxes by a county board for "bridges" fairly includes the building of new bridges, the repair of old ones and the building of approaches or abutments. People v. Chicago & N. W. Ry. Co., 249 Ill. 173.

BRIEF.

A mere statement of the opinion of counsel, filed in the Appellate Court on a writ of error, does not amount to a brief. Haberlau v. Lake Shore & M. S. R. Co., 73 Ill. App. 263.

BRIEF KASTEN.

German words definable as "letter box." Spies v. People, 122 Ill. 178.

BRIEF (OR BRIEVE) OUT OF THE CHANCERY.

A writ issued in Scotland in the name of the sovereign in the election of tutors to minors, the cognoscing of lunatics or of idiots, and the ascertaining the widow's terce; and sometimes in dividing the property belonging to heirs-portioners. In these cases, only brieves are now in use. Bell, Dict.

BRINGING SUIT.

The bringing of a suit is the issuing of a summons or other process, to bring the defendant into court. Chicago & N. W. Ry. Co. v. Jenkins, 103 Ill. 594.

BROKEN.

An ordinance providing that a pavement be composed in part of "broken" granite or limestone does not require that the granite or limestone be powdered, nor does the word "broken" include particles of the nature of stone dust or sand, but refers to pieces small enough to pass through certain rings specified in the ordinance, not requiring that all be of the same size, the ordinary meaning of the word referring to small pieces or fragments. Gage v. Chicago, 201 Ill. 97.

BROKER.

A middleman, who for some purposes is treated as the agent of both parties. Murray v. Doud, 167 Ill. 372; Saladin v. Mitchell, 45 Ill. 83; East St. Louis v. Brenner, 59 Ill. App. 608.

One who is engaged for others in negotiating contracts relative to property with the custody of which they have no concern. Braun v. Chicago, 110 Ill. 194. See also Banta v. Chicago, 172 Ill. 217 (quoting an ordinance of Chicago based on the foregoing definition).

An agent employed to make bargains and contracts between other persons in matters of trade, for a compensation. Eau Claire, etc., Co. v. Western, etc., Co., 213 Ill. 583; Murray v. Doud, 167 Ill. 372; Saladin v. Mitchell, 45 Ill. 83. To the same effect see Morehouse v. Winter, 159 Ill. App. 299.

At Common Law.

A person employed by merchants English and merchants strangers in contriving, making and concluding bargains and contracts between them concerning their wares and merchandise, and the moneys to be taken up by exchange between such merchants and tradesmen. Banta v. Chicago, 172 Ill. 213.

Ordinance.

The fact that an agent negotiated the sale of land in another state in Chicago does not make him a "broker," within the meaning of an ordinance requiring brokers to have licenses, there being no evidence that such agent was carrying on the business of broker in Chicago. Vossler v. Earle, 194 Ill. App. 523.

"Factor" Distinguished.

A broker is to be distinguished from a factor in that the latter has possession of the goods and may sell in his own name, while the broker does not have possession and must sell in the name of his principal. Braun v. Chicago, 110 Ill. 194; Saladin v. Mitchell, 45 Ill. 82; Cutler v. Pardridge, 182 Ill. App. 358; Peter Cooper's etc., Factory v. Devoe, 178 Ill. App. 299.

"Insurance Agents" Distinguished.

The word "brokers," used in paragraph 91 of section 1 of article 5 of the Cities and Villages Act (J. & A. ¶1334), relating to the powers of cities and villages, does not include "insurance agents" representing corporations, etc., so as to confer power on a city to enact and enforce an ordinance requiring such agents to take out a license. McKinney v. Alton, 41 Ill. App. 513.

BROKERAGE.

The compensation of a broker. Eau Claire, etc., Co. v. Western, etc., Co., 213 Ill. 583; Murray v. Doud, 167 Ill. 372; Saladin v. Mitchell, 45 Ill. 83.

BROTHER.

He who is born from the same father and mother with another, or from one of them only.

Brothers are of the whole blood when they are born of the same father and mother, and of the half-blood when they are the issue of one of them only. In the civil law, when they are the children of the same father and mother, they are called "brothers germain;" when they descend from the same father, but not the same mother, they are "consanguine brothers;" when they are the issue of the same mother, but not the same father, they are "uterine brothers." A "half-brother" is one who is born of the same father or mother, but not of both; one born of the same parents before they were married, a "left-sided brother;" and a bastard born of the same father or mother is called a "natural brother." See "Blood;" "Half-Blood;" "Line;" Merlin, Repert, Frere; Dict. de Jurisp. Frere; Code 3, 28, 27; Nov. 84, praef.; Dane, Abr. Index.

BROTHER-IN-LAW.

The brother of a wife or the husband of a sister.

There is no relationship, in the former case, between the husband and the brother-in-law, nor in the latter, between the brother and the husband of the sister; there is only affinity between them. See Vaughan, 302, 329.

BRUISE.

In medical jurisprudence. An injury done with violence to the person, without breaking the skin. It is nearly synonymous with "contusion" (q. v.). 1 Chanc. Prac. 38. See 4 Car. & P. 381, 487, 558, 565.

BRUKBARN.

In old Swedish law. The child of a woman conceiving after a rape, which was made legitimate. Literally, the child of a struggle. Barr. Obs. St.

BROUGHT.

A suit is not "brought," within the meaning of section 5047 of the Revised Statutes of the United States in force in 1878, providing that no suit shall be maintainable between an assignee in bankruptcy and those claiming adverse interests unless brought within two years, etc., by the substitution of the assignee as plaintiff in a suit pending between the bankrupts and another to recover for

conversion. Chicago & N. W. Ry. Co. v. Jenkins, 103 Ill. 595.

BUDDY.

The term "buddy," as used by miners, means "partner." Donk, etc., Co. v. Stroff, 200 Ill. 484.

BUGGERY.

Includes both "bestiality," or carnal connection between a human being and a beast, and "sodomy," or carnal connection between human beings against the order of nature. 3 Inst. 58.

BUILDER.

One whose occupation is to build or erect buildings and structures. People v. Lower, 251 Ill. 530.

BUILDING.

A fabric or edifice constructed for use or convenience; as a house, a church, a shop; if permanent and designed for the habitation of men or animals or the shelter of property. Bruen v. People, 206 Ill. 423.

An accident insurance policy providing for double indemnity if the insured receives fatal injuries in consequence of the burning of a "building" in which the insured shall be at the commencement of the fire, covers a case where the fatal injuries were received by the insured from a fire in the contents of the building in which he was when the fire began, as well as from the burning of the building itself. Wilkinson v. Aetna, etc., Co., 240 Ill. 213.

An edifice, erected by art and fixed upon or over the soil, composed of stone, brick, marble, wood, or other proper substance connected together, and designed for use in the position in which it is so fixed. Taken in its broadest sense, it can mean only an erection intended for use and occupation as a habitation, or for some purpose of trade, ornament, or use. 13 Gray (Mass.) 312.

A bridge (11 Wis. 119), a floating dock

(2 Vroom [N. J.] 477), seats or platforms in a park (55 Cal. 159; 39 Conn. 41) have been held not to be buildings, while an unfinished house (L. R. 1 C. C. 338), a stable (94 Ill. 456), a church (10 Pa. 413) are buildings.

BUILDING, ALTERING, REPAIR-ING OR ORNAMENTING.

Work done for "curbing, grading and paving" the street in front of a house is not within the meaning of section 1 of the Liens Act (J. & A. ¶ 7139), giving a lien for "building, altering, repairing or ornamenting any house." Smith v. Kennedy, 89 Ill., 486.

Furnishing materials and labor in placing a lightning rod on a house is not furnishing materials and labor in "building, altering, repairing, or ornamenting" a house, within the meaning of section 1 of the Liens Act (J. & A. ¶7139). Drew v. Mason, 81 Ill. 499.

BUILDING AND LOAN ASSOCIATION.

An organization created for the purpose of accumulating a fund by the monthly subscriptions or savings of its members, to assist them in building or purchasing for themselves dwellings or real estate, by loaning to them the requisite money from the funds of the society upon good security. Rhodes v. Missouri, etc., Co., 173 Ill. 629.

The purpose of a building and loan association is to enable a number of associates to combine and invest their savings to mutual advantage, so that any individual among them may receive out of the accumulations a sum by way of loan, wherewith to buy or build a house, mortgaging it to the association as security for the money borrowed, and ultimately making it his own by paying off the encumbrance out of his subscription. Rhodes v. Missouri, etc., Co., 173 Ill. 629.

BUILDING CONTRACT.

A lease providing for the erection of a building upon the demised premises by the lessee, which is to become the property of the lessor upon the termination of the lease, is within the meaning of the rule of law terming contracts made under the Liens Act (J. & A. ¶ 7139) as "building contracts." Carey-Lombard, etc., Co. v. Jones, 187 Ill. 208.

BUILDING LINE.

Where a plat contained a highway and upon the plat a short distance from the highway, across all the lots fronting it, was a line marked "building line fifty feet north from boulevard line," the purpose of the language and line was to reserve a space fifty feet in width off the front end of the lots abutting on the highway upon which no buildings were to be erected, the expression "building line," when used upon town or city plats, being a well understood term, the meaning of which is not doubtful or obscure. Simpson v. Mikkelsen, 196 Ill. 578.

BUILDING PURPOSES.

Where a contract for school house is largely in excess of the five per cent of the taxable value of the property in the district, and the purpose of a tax levy for "building purposes" was to pay the debt so incurred an objection to such tax should be sustained on application for judgment of sale, whether the levy of the tax was made before or after the contract was executed by the parties. B. & O. S. W. Ry. Co. v. The People, 195 Ill. 428.

The expression "building purposes," used in section 189 of the Schools Act (J. & A. ¶ 10227), relating to revenue for the support of schools, does not include a levy of a tax for building a schoolhouse the contract cost of which is largely in excess of five per cent of the taxable value of the property in the district. B. & O. S. W. Ry. Co. v. People, 195 Ill. 426.

The expression "building purposes," used in section 1 of article 8 of the Schools Act of 1889, substantially reenacted in section 189 of the Schools Act (J. & A. ¶ 10227), relating to revenue for the support of schools, applies solely to

the building of schoolhouses and matters incident thereto. O'Day v. People, 171 Ill. 297; Chicago & A. R. Co. v. People, 163 Ill. 621.

BULL.

A letter from the pope of Rome, written on parchment, to which is attached a leaden seal impressed with the images of Saint Peter and Saint Paul.

There are three kinds of apostolical rescripts,—the "brief," the "signature," and the "buil," which last is most commonly used in legal matters. Bulls may be compared to the edicts and letters patent of secular princes. When the bull grants a favor, the seal is attached by means of silken strings; and when to direct execution to be performed, with flax cords. Bulls are written in Latin, in a round and Gothic hand. Ayliffe, Par. 132; Ayliffe, Pand. 21; Merlin. Repert.

BULLA.

(Lat.) A seal used by the Roman emperors during the lower empire, and which was of four kinds,—gold, silver, wax, and lead. These are described by Spelman in detail.

A letter, brief, or charter, sealed with such a seal (literae bullatae). Spelman.

A brief, mandate, or bull of the pope, having usually a leaden, but sometimes a golden, seal. Spelman; Blount; Cowell; Burrill.

BULL WHEEL.

A large sheave wheel. Pate v. Big Muddy, etc., Co., 252 Ill. 201.

BULLION FUND.

A deposit of public money at the mint and its branches. The object of this fund is to enable the mint to make returns of coins to private depositors of bullion without waiting until such bullion is actually coined. If the bullion fund is sufficiently large, depositors are paid as soon as their bullion is melted and assayed,

and the value ascertained. It thus enables the mint to have a stock of coin on hand to pay depositors in advance. Such bullion becomes the property of the government, and, being subsequently coined, is available as a means of prompt payment to other depositors. Act May 23, 1850 (9 U. S. St. at Large, 436).

BURDEN OF PROOF.

The obligation on the party who asserts the affirmative of the issue to prove the issue by a preponderance of the evidence. Chicago, etc., Co. v. Myers, 134 Ill. App. 67.

The duty of proving the facts in dispute on an issue raised between the parties in a cause. See 16 N. Y. 66; 1 Gray (Mass.) 500; 6 Wheat. (U. S.) 481.

Burden of proof is to be distinguished from prima facie evidence or a prima facie case. Generally, when the latter is shown, the duty imposed upon the party having the burden will be satisfied, but it is not necessarily so. 6 Cush. (Mass.) 364; 11 Metc. (Mass.) 460; 22 Ala. 20; 7 Blackf. (Ind.) 427; 1 Gray (Mass.) 61; 7 Boston Law Rep. 439.

The term "burden of proof" is used in two different senses; first, the duty of establishing the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case, whether civil or criminal, in which the issue arises, and second, the duty of producing evidence at the beginning or at any subsequent stage of the trial, in order to make or meet a prima facie case. Chicago, etc., Co. v. Mee, 218 Ill. 15; U. S., etc., Co. v. Cooney, 214 Ill. 525; Supreme Tent v. Stensland, 206 Ill. 132; Egbers v. Egbers, 177 Ill. 88; Nagle v. Schnadt, 136 Ill. App. 424.

BURDEN OF THE ISSUE.

The burden of proof in the sense of ultimately proving or establishing the issue or case of the party upon which such burden rests, as distinguished from the burden or duty of going forward and producing evidence. U. S., etc., Co. v. Cooney, 214 Ill. 526.

BUREAU.

The word "bureau," as applied to a division of an administrative department, implies not only a division where business is to be conducted under certain rules and regulations, but includes the operating force as well. People v. Coffin, 202 Ill. App. 100.

BUREAUCRACY.

A government by departments, each under a chief; a word to describe the system used in an invidious sense. Wharton.

BURGAGE.

A species of tenure, described by old law writers as but tenure in socage, where the king or other person was lord of an ancient borough, in which the tenements were held by a rent certain.

Such boroughs had, and still have, certain peculiar customs connected with the tenure, which distinguished it from the ordinary socage tenure. These customs are known by the name of "Borough English" (q. v.), and they alter the law in respect of descent, as well as of dower, and the power of devising. By it the youngest son inherits the lands of which his father died seised. A widow, in some boroughs, has dower in respect to all the tenements which were her husband's; in others, she has a moiety of her husband's lands so long as she remains unmarried; and with respect to devises, in some places, such lands only can be devised as were acquired by purchase; in others, estates can only be devised for life. 2 Bl. Comm. 82; Glanv. bk. 7, c. 3; Litt, § 162; Cro. Car. 411; 1 Salk. 243; 2 Ld. Raym. 1024; 1 P. Wms. 63; Fitzh. Nat. Brev. 150; Cro. Eliz. 415.

BURGESS.

A magistrate of a borough. Blount.
An inhabitant of a town; a freeman;
one legally admitted as a member of a
corporation. Spelman. A qualified voter.
3 Steph. Comm. 192. A representative in

parliament of a town or borough. 1 Bl. Comm. 174.

BURGHMOTE.

In Saxon law. A court of justice held twice a year, or oftener, in a burg. All the thanes and free owners above the rank of ceorls were bound to attend without summons. The bishop or lord held the court. Spence, Eq. Jur.

BURGLARIOUSLY.

The omission of the word "burglariously" in an indictment for burglary does not render the indictment bad where the offense charged is described in the terms of the statute. Lyons v. People, 68 Ill. 274.

A technical word which must be introduced into an indictment for burglary at common law. No other word at common law will answer the purpose, nor will any circumlocution be sufficient. 4 Coke, 39; 5 Coke, 121; Cro. Eliz. 920; Bac. Abr. "Indictment" (G, C). But there is this distinction: When a statute punishes an offense, by its legal designation, without enumerating the acts which constitute it, then it is necessary to use the terms which technically charge the offense named, at common law. But this is not necessary when the statute describes the whole offense, and the indictment charges the crime in the words of the Thus, an indictment which statute. charges the statute crime of burglary is sufficient, without averring that the crime was committed "burglariously" 4 Metc. (Mass.) 357.

BURGLARY.

At Common Law.

At common law burglary was an offense against the habitation of man. People v. Carr, 255 Ill. 208.

Burglary, at common law, is committed where a person breaks and enters any dwelling house by night, with intent to commit a felony therein, whether such felonious intent be executed or not. Bromley v. People, 150 Ill. 299.

At common law, the breaking and entering the house of another in the night-time, with intent to commit a felony therein, whether the felony be actually committed or not. Coke, 3d Inst. 63; 1 Hale, P. C. 549; 1 Hawk. P. C. c. 38, § 1; 4 Bl. Comm. 224; 2 East, P. C. c. 15, § 1, p. 484; 2 Russ. Crimes, 2; Rosc. Crim. Ev. 252; 1 Coxe (N. J.) 441; 7 Mass. 247.

The elements of the offense are:

- (1) The breaking (105 Mass. 588); but a constructive breaking is sufficient (9 Ired. [N. C.] 463). See "Breaking."
 - (2) The entry. 111 Mass. 395.
- (3) The building broken and entered must be the dwelling house of another (43 Ala. 17); but an outstanding building within the curtilage is regarded as part of the dwelling (26 Ala. 45).
- (4) Both breaking and entry must be in the nighttime. 10 N. H. 105.
- (5) And both must be with intent to commit a felony in the house (12 N. H. 42); but the felony need not have been committed (29 Ind. 80).

The offense has been enlarged by statute both as to the buildings broken into, and as to the time of the breaking and entry.

Criminal Code.

Under the definition of "burglary" in section 36 of division 1 of the Criminal Code (J. & A. ¶3522) it is immaterial. An offense may be "burglary," within the meaning of section 36 of division 1 of the Criminal Code (J. & A. ¶3532), whether committed in the daytime or at night. Schwabacher v. People, 165 Ill. 624; Bromley v. People, 150 Ill. 299.

BURIAL.

The act of interring the dead.

No burial is lawful unless made in conformity with the local regulations; and when a dead body has been found, it cannot be lawfully buried until the coroner has held an inquest over it. In England it is the practice for coroners to issue warrants to bury, after a view. The leaving unburied the corpse of a person for whom the defendant is bound to provide

Christian burial, as a wife or child, is an indictable misdemeanor, if he is shown to have been of ability to provide such burial. 2 Den. C. C. 325.

BURLAWS, BIRLAWS, OR BYRLAWS.

In Scotch law. Laws made by neighbors elected by common consent in the birlaw courts. Skene de Verb. Sign,

Laws made by husbandmen, etc., concerning neighborhood (rusticorum leges). Spelman, voc. "Bellagines," considers this word essentially the same with "by-laws" (q. v.).

BURNING IN THE HAND.

When a layman was admitted to benefit of the clergy he was burned in the hand, "in the brawn of the left thumb," in order that he might not claim the benefit twice. This practice was finally abolished by St. 19 Geo. III. c. 74, though before that time the burning was often done with a cold iron. 12 Mod. 448; 4 Bl. Comm. 267 et seq.

BURST.

A sudden breaking forth; an explosion. Helmbacher, etc., Co. v. Garrett, 119 Ill. App. 168.

BURYING ALIVE.

In English law. The ancient punishment of sodomites, and those who contracted with Jews. Fleta, lib. 1, c. 27, § 3.

BUSHEL.

The Winchester bushel, established by 12 Wm. III. c. 5 (1701), was made the standard of grain. A cylindrical vessel, eighteen and a half inches in diameter, and eight inches deep inside, contains a bushel. The capacity is 2,145.42 cubic inches. The bushel established by 5 & 6 Geo. IV. c. 74, is to contain 2,218.192 cubic inches. This measure has been

adopted in many of the United States. In New York the heaped bushel is allowed, containing 2,815 cubic inches. The exceptions, as far as known, are Connecticut, where the bushel holds 2,198 cubic inches; Kentucky 2,150.66; Indiana, Ohio, Mississippi, and Missouri, where it contains 2,150.4 cubic inches. Dane, Abr. c. 211 a. 12, § 4. See the whole subject discussed in Report of the Secretary of State of the United States to the Senate, Feb. 22, 1821.

In accordance with a joint resolution of congress, adopted in June, 1836, a uniform scale of weights and measures has been adopted in many states, by which the bushel shall contain 2,150 cubic inches. See Dom. Commerce Act N. Y. § 2.

It is further provided that, where any commodity is sold by the bushel, and no special agreement is made as to the mode of measuring, the bushel shall consist of 70 pounds of lime; 60 pounds of wheat, peas, potatoes, clover seed, or beans; 57 pounds of onions; 56 pounds of Indian corn or rye; 55 pounds of flaxseed; 54 pounds of sweet potatoes; 50 pounds of corn meal, rye meal, or carrots; 48 pounds of barley, apples, or buckwheat; 45 pounds of beard grass, timothy seed, or rice; 33 pounds of dried peaches; 32 pounds of oats; 25 pounds dried apples; 20 pounds bran or shorts. Id. § 8.

BUSINESS.

Occupation or employment. Olson v. Ostby, 178 Ill. App. 176.

The employment which occupies the time, attention and labor. Adam v. Musson, 37 Ill. App. 503.

BUSINESS HOURS.

The time of the day during which business is transacted. In respect to the time of presentment and demand of bills and notes, business hours generally range through the whole day down to the hours of rest in the evening, except when the paper is payable at a bank, or by a banker. 2 Hill (N. Y.) 835. See 15 Me. 67; 17 Me. 230.

BUSINESS OF BANKING.

The establishment of a common fund for lending money. Meadowcroft v. People, 163 Ill. 65.

BUT.

Except; unless; save; yet; still; however; nevertheless. Winter v. Dibble, 251 Ill. 218.

Indicates Exception.

The word "but," whether used as a conjunction or a preposition, indicates exception. Winter v. Dibble, 251 Ill. 218.

As Conjunction-Marks Opposition.

As a conjunction, the word "but" is used as a connective of sentences more or less exceptive or adversative, marking opposition in passing from one thought to another. Winter v. Dibble, 251 Ill. 218.

Constitution of 1870.

The word "but," introducing the second clause of section 1 of article 9 of the Constitution of 1870, relating to the levying of taxes, is used in an exceptive or adversative sense, and means "on the contrary," or "on the other hand." Sterling, etc., Co. v. Higby, 134 Ill. 565.

BUTLER'S ORDINANCE.

In English law. A law for the heir to punish waste in the life of the ancestor. "Though it be on record in the parliament book of Edward I., yet it never was a statute, nor ever so received; but only some constitution of the king's council, or lords in parliament, which never obtained the strength or force of an act of parliament." Hale, Hist. Ccm. Law, 18.

BUTT.

A measure of capacity, equal to one hundred and eight gallons.

BUTTS.

The ends or short pieces of arable lands left in ploughing. Cowell.

Butt also denotes a measure of land

(Jacob; Cowell), and a measure of quantity, equal to one hundred and eight gallons. See "Measure."

BUTTY.

An associate loader in a coal mine. Chicago, etc., Co. v. Peterson, 39 Ill. App. 116.

BY.

At common law a grant bounding fresh water "by" a stream is by construction extended to the thread of the stream. Buttenuth v. St. Louis, etc., Co., 123 Ill. 549.

BY AND UNDER THE JOINT CONTROL.

Section 110 of the Roads and Bridges Act of 1879, providing that in certain cases the county shall pay one-half the cost of bridges in towns, and that all funds raised under the section shall be expended "by and under the joint control" of the town highway commissioners and two persons appointed by the county board confers all the power respecting such bridges upon the commissioners and the appointees of the board jointly, including the determination of the specific kind of bridge to be built, the amount to be expended and the contracts to be made for building it, and gives the commissioners no power apart from the appointees of the county board. Mercer County v. New Boston, 13 Ill. App. 279.

BY-BIDDING.

Bidding on property offered for sale at auction, by or in behalf of the owner, for the mere purpose of raising the price, or inducing others to bid higher. Sometimes called "puffing." By-bidding by the owner, or caused by the owner, or ratified by him, has often been held to be a fraud, and avoids the sale. 8 How. (U. S.) 153.

BY BILL, OR BY BILL WITHOUT WRIT.

These terms were anciently applied to actions commenced by original bill, in-

stead of by original writ. 1 Archb. Pr. pp. 2, 337; 5 Hill (N. Y.) 213. They were later used to denote actions commenced by capias.

BY ESTIMATION.

A term used in conveyances. In sales of land it not unfrequently occurs that the property is said to contain a certain number of acres "by estimation," or so many acres, "more or less." When these expressions are used, if the land fall short by a small quantity, the purchaser will receive no relief. In one case of this kind, the land fell short two-fifths, and the purchaser received no relief. 2 Freem. 106. See 1 Call. (Va.) 301; 4 Hen. & M. (Va.) 184; 6 Bin. (Pa.) 106; 1 Serg. & R. (Pa.) 166; 2 Johns. (N. Y.) 37; 5 Johns. (N. Y.) 508; 15 Johns. (N. Y.) 471; 3 Mass. 380; 5 Mass. 355; 1 Root (Conn.) 528. The meaning of these words has never been precisely ascertained by judicial decision. See Sugd. Vend. 231-236; Wolff. Inst. § 658.

BY GOD AND MY COUNTRY.

In old English criminal practice. The established formula of reply by a prisoner, when arraigned at the bar, to the question, "Culprit, how wilt thou be tried?" Mr. Barrington thinks the correct formula must originally have been, "By God or my country," i. e., by ordeal (the judicium Dei), or by jury, for the reason that the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. Barr. Obs. St. 84, note (i). But it is clear that, in answering the question, the prisoner was expected to select one particular mode of trial, which the alternative expression contended for would not amount to. That the expression "By God" did not necessarily and exclusively import the ordeal appears from the form of issue in cases of trial by the grand assize, which always was that the party put himself "on God and on the grand assize." See Britt. c. 48; Y. B. T. 20 Hen. VI. 4. That every word of this formula was deemed essential appears from several cases on record, in which the prisoner's replies, "By God and my good country," "By God and honest men," were severally rejected, and he was compelled to use the precise words of the form. 1 How. St. Tr. 1143; 3 How. St. Tr. 520; 6 How. St. Tr. 75; 7 How. St. Tr. 831. On the trial of John James for high treason (13 Car. II. 1661), and the prisoner requesting an explanation of the form, the judge said that "By God" meant "by the law of God," and "by the country," twelve Middlesex men of truth that would judge impartially between the king and him. 6 How. St. Tr. 75.

BY-LAW MEN.

In an ancient deed, certain parties are described as "yeomen and by-law men for this present year in Easinguold." 6 Q. B. 60. They appear to have been men appointed for some purpose of limited authority by the other inhabitants, as the name would suggest, under by-laws of the corporation appointing.

BY-LAWS.

- In Old English Law.

The ordinances of a town or village. See "By."

- In Modern Usage.

Rules and ordinances made by a corporation for its own government. See 18 App. Div. (N. Y.) 142.

BY NOVEMBER.

A contract to have a mill completed "by November" excludes the whole of that month. Richardson v. Ford, 14 Ill. 333.

BY OR BEFORE.

Where an act is to be done by or before a given day, it must be performed prior to that day. Richardson v. Ford, 14 Ill. 333.

BY ORDINANCE.

The expression "by ordinance," used in section 1 of article 8 of the Cities and

Villages Act of 1874, now, as amended, being section 1 of article 8 of the Cities and Villages Act (J. & A. ¶1383) (the expression there being "by an ordinance"), relating to the duties of city councils and boards of trustees in levying taxes, refers to a resolution or any other proceeding entered upon their journal or other record, declaring the ascertained amount of all appropriations, and indicating their determination that such amount shall be levied and assessed on the taxable property within the municipality. People v. Lee, 112 Ill. 119.

BY REASON OF SICKNESS, DEATH OR OTHER DISABILITY.

The provision of section 81 of the Practice Act which authorizes a judge other than the trial judge to sign a bill of exceptions in case the trial judge is unable to sign the bill "by reason of death, sickness or other disability," means a disability of a physical or mental nature by which the trial judge is disabled from performing his judicial functions, and does not include the mere absence of the trial judge from the district or circuit. People v. Rosenwald, 266 Ill. 550.

BY-ROAD.

"There are three kinds of roads known to our law: (1) Public roads; (2) private roads; (3) by-roads. All these differ from a mere right of way. A by-road is, as its name imports, an obscure or neighborhood road in its earlier existence, not used to any great extent by the public, yet so far a public road that the public have of right free access to it at all times." 34 N. J. Law, 89; 46 N. J. Law, 509.

BY THE DRINK.

In an action to recover the price of liquor, evidence that the liquor sought to be recovered for was sold "by the drink" would be understood by the jury as meaning that the liquor was sold in quantities not exceeding one quart, with-

in the meaning of section 17 of the Licenses Act of 1845, providing that accounts for the sale of liquors should be void, and the purchase price not recoverable, where the amount claimed exceeded fifty cents, but which provided that recovery might be had where the sales were larger in quantity than one quart. Sappington v. Carter, 67 Ill. 485.

BY THE JUDGMENT OF HIS PEERS.

The expression "by the judgment of his peers," used in section 8 of article 13 of the Constitution of 1848, refers to a trial by jury in the courts according to the accustomed course of judicial proceedings. Newland v. Marsh, 19 Ill. 382.

C.

The third letter of the alphabet. It was used on the ballots of Roman jurors to denote condemnation, being the initial letter of condemno.

"C" is sometimes used for "t" in old records, as "tercia" for "tertia," and "tocius" for "totius." Mag. Cart. 9 Hen. III. c. 7.

C. A. V.

An abbreviation for curia advisari

C. O. D.

Collect on delivery. The abbreviation has acquired an established meaning (American Express Co. v. Lesem, 39 Ill. 312), but judicial notice will not be taken thereof (55 N. Y. 200).

C. T. A.

Cum testamento annexo. A species of administration.

CABAL.

(Hebrew, cabala, tradition; or Fr. cabale, intrigue.)

(1) A hidden or imaginary art prac-

ticed by the Jews. 1 Hall. Lit. Hist. 205. The Jews believed that Moses received in Sinai not only the law, but also certain unwritten principles of interpretation, called "cabala" or "tradition," which were handed down from father to son, and in which mysterious and magical powers were supposed to reside.

(2) A junto or private meeting of small parties. This name was given to that ministry in the reign of Charles II., formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted for the restoration of popery.

CABALLERIA.

In Spanish law. A portion of spoils taken or lands conquered in a war, granted to a horse soldier. Dict. Span. Acad.; 12 Pet. (U. S.) 444, note.

A quantity of land varying in extent in different provinces. In those parts of the United States which formerly belonged to Spain, it is a lot of one hundred feet front, two hundred feet depth, and equivalent to five peonias. 2 White, New Recop. 49; 12 Pet. (U. S.) 444, note; Escriche, Dic. Raz.

CAEDUA.

(Lat. from caedere, to cut.) In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood. Silva caedua est quae in hoc habetur ut caederetur, sylva caedua is that kind of wood which is kept for the purpose of being cut. Dig. 50. 16. 30. According to Servios, it was that kind which, when cut down, grew up again from the trunks or roots. Id. See Dig. 7, 1, 10, 11; Id. 43, 24, 18.

CAETERORUM.

(Lat.) Of the rest.

Administration granted as to the residue of an estate, which cannot be administered under the limited power already granted. 1 Williams, Ex'rs, 357; 2 Hagg. Ecc. 62; 4 Hagg. Ecc. 382, 386; 4 Man. & G. 398; 1 Curt. Ecc. 286.

It differs from administration de bonis

non in this, that in caeterorum the full power granted is exercised and exhausted, while in the other the power is, for some cause, not fully exercised. See "Administration."

CAIRNS' ACT.

So called from the solicitor general by whom it was introduced. Act 21 & 22 Vict. c. 27, enabling the court of chancery to award damages in addition to, or in substitution for, an injunction or decree for specific performance. Per Jessel, M. R., in 7 Ch. Div. 551.

CALENDAR.

A list or enumeration of causes arranged for trial in court. Titley v. Kaehler, 9 Ill. App. 539.

Julius Caesar ordained that the Roman year should consist of three hundred and sixty-five days, except every fourth year, which should contain three hundred and sixty-six,---the additional day to be reckoned by counting the 24th day of February (which was the 6th of the calends of March) twice. See "Bissextile." This period of time exceeds the solar year by eleven minutes, or thereabouts, which amounts to the error of a day in about one hundred and thirty-one years. 1582 the error amounted to eleven days or more, which was corrected by Pope Gregory. Out of this correction grew the distinction between Old and New Style. The Gregorian or New Style was introduced into England in 1752; the 2d day of September (O. S.) of that year being reckoned as the 14th day of September (N. S.).

Order of Dismissal.

An order dismissing a cause and reciting that the cause was reached on the call of the "calendar" affords no information, from the use of the word "calendar," as to how the list referred to was made up, or on what principle the various causes were arranged on it. Titley v. Kaehler, 9 Ill. App. 539.

"Docket" Compared.

The word "calendar," as applied to court proceedings, may or may not be

synonymous with "docket." Titley v. Kaehler, 9 Ill. App. 539.

CALENDS.

Among the Romans, the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together. And if pridie, the day before, be added to it, then it is the last day of the foregoing month, as pridie calend. Septemb. is the last day of August. If any number be placed with it, it signifies that day in the former month which comes so much before the month named, as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months. Jacob.

CALL.

As Applied to Stock Subscriptions.

An official declaration by the proper corporate authorities that the whole or a specified part of the subscriptions to the capital stock is required to be paid. Newmann v. Sexton, 156 Ill. App. 519.

As Applied to Contract.

A call is an offer to sell property for some stated delivery, which, in consideration of a certain amount of money paid, is left open a certain length of time. Woods v. Bates, 126 Ill. App. 186.

As Used in Contracts for Future Delivery.

The word "call," as used by those dealing in commodities for future delivery, is the privilege of calling for or not calling for the thing bought. Minnesota, etc., Co. v. Whitebreast, etc., Co., 160 Ill. 97; Pearce v. Foote, 113 Ill. 234; Pixley v. Boynton, 79 Ill. 353; Carroll v. Holmes, 24 Ill. App. 456.

CALL OF THE CALENDAR.

A judgment reciting that a case was dismissed for want of prosecution on the "call of the calendar" does not show that the case has been reached for trial when dismissed, where there is nothing to show how such calendar was made up, or whether the call was preliminary or final. Titley v. Kaehler, 9 Ill. App. 539.

CALPE, OR CAUPE.

In old Scotch law. A gift of a horse, or other thing, made by a man in his lifetime and liege poustie (lawful power), to the chief of his clan or other superior, for his maintenance and protection, and which was delivered immediately after his decease. Skene de Verb. Sign. voc. "Caupes." A species of heregeld.

CALUMNY.

Defamation. In old practice. The unjust prosectuion or defense of a suit. See 30 Ohio St. 117.

CAMERALISTICS.

The science of finance or public revenue, comprehending the means of raising and disposing of it. Wharton.

CAMPBELL'S ACT.

The popular name for Act 9 & 10 Vict. c. 93, by which (as amended by St. 27 & 28 Vict. c. 115) an action for damages is given for the benefit of the wife, husband, parent, grandparent, step-parent, child, grandchild and stepchild of a person whose death has been caused by a wrongful act, neglect, or default for which he himself could, if death had not ensued, have recovered damages from the wrongdoer. Underh. Torts, 143; Campb. Neg. 20. Similar statutes of recent enactment exist in nearly all of the states, some of which permit the personal representatives of the person killed to sue.

CAMPUS MAII.

(Law Lat.) The field of May. An an-

on May Day, when they confederated for the defense of the kingdom against all its enemies. Wharton.

CANCELLATION.

The act of crossing out a writing; the manual operation of tearing or destroying a written instrument. 1 Eq. Cas. Abr. 409; Roberts, Wills, 367, note.

Revocation or annulment of an instrument in any manner. See 58 Pa. St. 238.

CANDIDATE.

(Lat. candidus, white.) Said to be from the custom of Roman candidates to clothe themselves in a white tunic.

One who offers himself for an office. One must offer himself either directly, or by consenting to the presentation of his name by others to be a candidate. Maule & S. 212.

It has been held to include persons seeking a nomination for office. 112 Pa. St. 624.

CANDY.

A concession to a restaurant company for the sale of "candy" does not cover the sale of ice cream. Merle v. Beifeld, 194 Ill. App. 389.

CANFARA.

A trial by hot iron, formerly in use in England. Jacob.

CANON LAW.

A body of ecclesiastical law, which originated in the church of Rome, relating to matters of which that church has or claims jurisdiction.

A canon is a rule of doctrine or of discipline, and is the term generally applied to designate the ordinances of councils and decrees of popes. The position which the canon law obtains beyond the papal dominions depends on the extent to which it is sanctioned or permitted by the government of each country; and hence the niversary assembly of the Saxons, held | system of canon law as it is administered in different countries varies somewhat.

Though this system of law is of primary importance in Catholic countries alone, it still maintains great influence and transmits many of its peculiar regulations down through the jurisprudence of Protestant countries which were formerly Catholic. Thus, the canon law has been a distinct branch of the profession in the ecclesiastical courts of England for several centuries; but the recent modifications of the jurisdiction of those courts have done much to reduce its independent importance.

The Corpus Juris Canonici is drawn from various sources,-the opinions of the ancient fathers of the church, the decrees of councils, and the decretal epistles and bulls of the holy see, together with the maxims of the civil law and the teachings of the Scriptures. sources were first drawn upon for a regular ecclesiastical system about the time of Pope Alexander III., in the middle of the twelfth century, when one Gratian, an Italian monk, animated by the discovery of Justinian's Pandects, collected the ecclesiastical constitutions also into some method in three books, which he entitled Concordia Discordantium Canonum. These are generally known as Decretum Gratiani.

The subsequent papal decrees to the time of the pontificate of Gregory IX. were collected in much the same method, under the auspices of that pope, about the year 1230, in five books, entitled Decretalia Gregorii Noni. A sixth book was added by Boniface VIII., about the year 1298, which is called Sextus Decretalium. The Clementine Constitution, or decrees of Clement V., were in like manner authenticated in 1317 by his successor. John XXII., who also published twenty constitutions of his own, called the Extravagantes Joannis, so called because they were in addition to, or beyond the boundary of, the former collections, as the additions to the civil law were called Novels. To these have since been added some decrees of later popes, down to the time of Sixtus IV., in five books, called Extravagantes Communes. And all these together—Gratian's Decrees, Gregory's Decretals, the Sixth Decretals, the Clementine Constitutions, and the Extravagants of John and his successors—form the Corpus Juris Canonici, or body of the Roman law. 1 Bl. Comm. 82; Encyclopedie, Dr. Canon. Dr. Pub. Ecc.; Dict. de. Jur. Dr. Canon.; Ersk. Inst. bk. 1, tit. 1, § 10.

CANNTRED.

A hundred; a district containing a hundred villages. Used in Wales in the same sense as "hundred" in England. Cowell; Termes de la Ley.

CANUM.

(Law Lat. from Celt. can, chan, or kain, a head.) In old Scotch law. A tribute or duty paid by the tenant of land to the lord, especially to ecclesiastical superiors. According to Skene, it was payable either in the produce of the land, or in money. Skene de Verb. Sign. But it seems to have been generally paid in produce, such as wheat, oats, poultry, etc. The Scotch word was cane or kain; and the expressions "cane fowls," "cane cheese," "cane oats" are frequently made use of.

CANVASS.

The canvass of votes by the judges of election, required in section 57 of the Election Act (J. & A. ¶ 4782), is merely a count of the ballots, in which the judges credit to the several candidates the ballots which in their judgment ought to be counted for them. Graham v. Peters, 248 Ill. 53.

CAPACITY.

Ability; power; qualification or competency of persons, natural or artificial, for the performance of civil acts depending on their state and condition as defined or fixed by law; power; competency; qualification; ability; power or qualification to do certain acts. Hronek v. People, 134 Ill. 152.

As Applied to Mentality.

When used in an instruction with reference to mentality, the word "capacity" means the ability to learn by experience. Fowler v. Chicago & E. I. R. Co., 234 Ill. 623.

The measure of ability, talent; adequate mental power to receive, understand, endure, etc. Vickers J. dissenting opinion Lake Erie & W. R. Co. v. Klinkrath, 227 Ill. 444.

As applied to mentality, the word "capacity" means the ability to learn by experience, or otherwise. Fowler v. Chicago & E. I. R. Co., 234 Ill. 623.

"Experience" Excluded.

The word "capacity" does not include "experience." Fowler v. Chicago & E. I. R. Co., 234 Ill. 623; Lake Erie & W. R. Co. v. Klinkrath, 227 Ill. 442.

CAPE.

As Applied to Land.

A neck or narrow point of land extending some distance into a body of water. Waller v. People, 175 Ill. 222.

Local Meaning in England.

In certain localities in the northern part of England, the word "cape" means the coping of a wall, and also ears of corn broken off in threshing. Waller v. People, 175 Ill. 222.

As Wine.

The word "cape" is sometimes employed as descriptive of a kind of wine made at the Cape of Good Hope. Waller v. People, 175 Ill. 222.

As Garment.

A garment or part of a garment used for covering the shoulders of the wearer. Waller v. People, 175 Ill. 222.

CAPIAS.

(Lat. capere, to take; capias, that you take.) A writ directing the sheriff to take the person of the defendant into custody.

nally only to enforce compliance with the summons of an original writ, or with some judgment or decree of the court. It was originally issuable as a part of the original process in a suit only in case of injuries committed by force or with fraud, but was much extended by statutes. Being the first word of distinctive significance in the writ, when writs were framed in Latin, it came to denote the whole class of writs by which a defendant's person was to be arrested. It was issuable either by the court of common pleas or king's bench, and bore the seal of the court.

CAPIAS AD AUDIENDUM JUDIC-IUM.

A writ issued, in a case of misdemeanor, after the defendant has appeared and is found guilty, to bring him to judgment if he is not present when called. 4 Sharswood, Bl. Comm. 368.

CAPIAS AD COMPUTANDUM.

A writ which issued in the action of account render upon the judgment quod computet, when the defendant refused to appear in his proper person before the auditors and enter into his account.

According to the ancient practice, the defendant might, after arrest upon this process, be delivered on mainprize, or, in default of finding mainpernors, was committed to the Fleet prison where the auditors attended upon him to hear and receive his account. The writ is now disused.

CAPIAS AD RESPONDENDUM.

A writ commanding the sheriff to take the body of the defendant, if he may be found in his bailiwick or county, and him safely keep, so that he may have him in court on the day of the return to answer to the plaintiff of a plea of debt, trespass, etc., as the case may be. People v. Hoffman, 97 Ill. 236.

CAPIAS AD SATISFACIENDUM.

A judicial writ of execution, which is-It is a judicial writ, and issued origi- | sues out on the record of a judgment, by

which the sheriff is commanded to take the body of the defendant in execution, and him safely to keep, so that he have his body in court at the return of the writ to satisfy the plaintiff his debt and damages. People v. Hoffman, 97 Ill. 236.

CAPIAS EXTENDI FACIAS.

A writ of execution issuable in England against a debtor to the crown, which commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. Man. Exch. Prac. 5. It seems to be practically obsolete.

CAPIAS IN WITHERNAM.

A writ directing the sheriff to take other goods of a distrainor equal in value to a distress which he has formerly taken and still withholds from the owner beyond the reach of process.

When chattels taken by distress were decided to have been wrongfully taken, and were by the distrainer eloigned, that is, carried out of the county or concealed, the sheriff made such a return. Thereupon this writ issued, thus putting distress against distress.

Goods taken in withernam are irrepleviable till the original distress be forthcoming. 3 Bl. Comm. 148.

CAPIAS PRO FINE.

A writ which issued against a defendant who had been fined, and did not discharge the fine according to the judgment.

The object of the writ was to arrest a defendant against whom a plaintiff had obtained judgment and detain him until he paid to the king the fine for the public misdemeanor, coupled with the remedy for the private injury sustained, in all cases of forcible torts (11 Coke, 43; 5 Mod. 285), falsehood in denying one's own deed (Co. Littl. 131; 8 Coke, 60), unjustly claiming property in replevin, or contempt by disobeying the command of the king's writ, or the express prohibition of any statute (8 Coke 60). It is

now abolished. 2 Sharswood, Bl. Comm. 398.

CAPIAS UTLIGATUM.

A writ directing the arrest of an outlaw.

If general, it directs the sheriff to arrest the outlaw, and bring him before the court on a general return day.

If special, it directs the sheriff, in addition, to take possession of the goods and chattels of the outlaw, summoning a jury to determine their value.

It was a part of the process subsequent to the capias, and was issued to compel an appearance where the defendant had absconded, and a capias could not be served upon him. The outlawry was readily reversed upon any plausible pretext, upon appearance of a party in person or by attorney, as the object of the writ was then satisfied. The writ issued after an outlawry in a criminal as well as in a civil case. See Sharswood, Bl. Comm. 284; 4 Bl. Comm. 320.

CAPITA.

(Lat.) By heads. An expression of frequent occurrence in laws regulating the distribution of the estates of persons dying intestate. When all the persons entitled to shares in the distribution are of the same degree of kindred to the deceased person (e. g., when all are grandchildren), and claim directly from him in their own right, and not through an intermediate relation, they take per capita, that is equal shares, or share and share alike. But when they are of different degrees of kindred (e. g., some the children, others the grandchildren or the great-grandchildren, of the deceased), those more remote take per stirpem, or per stirpes, that is they take respectively the shares their parents (or other relation standing in the same degree with them of the surviving kindred entitled, who are in the nearest degree of kindred to the intestate) would have taken had they respectively survived the intestate. Reeve, Descent, Introd. xxvii. Rop. Leg. 126, 130.

CAPITAL.

(1) The amount of money invested in a business; the fund dedicated to a business to support its credit, to provide for contingencies, to suffer diminution from losses, and to derive accretion from gains and profits. 30 Fed. 410.

As used in the revenue act it does not include money temporarily borrowed. 21 Wall. (U. S.) 284.

(2) "The actual estate, whether in money or property, which is owned by an individual or a corporation. In reference to a corporation it is the aggregate of the sum subscribed and paid in by the shareholders, with the addition of all gains or profits realized in the use or investment of those sums." 23 N. Y. 219.

CAPITAL STOCK.

Of Corporation.

The money contributed by the corporators to the capital. Consolidated, etc., Co. v. Miller, 236 Ill. 153.

As Trust Fund.

The capital stock of a moneyed corporation is a trust fund for the payment of its debts, of which the directors are trustees, to be managed for the benefit of its shareholders during its life, and for the benefit of its creditors in the event of its dissolution. Bouton v. Dement, 123 Ill. 148.

Revenue Act.

The term "capital stock," as used in the Revenue Act (J. & A. ¶¶ 9214 et seq.), means all the property and right of a corporation of every kind and nature wherever located. Ohio & M. R. Co. v. Weber, 96 Ill. 448.

The expression "capital stock," as used in the Revenue Act (J. & A. ¶¶ 9214 et seq.), relating to the taxation of corporations, is one intended to designate the property of the corporation subject to taxation, whether tangible or intangible, not in separate parcels, but as a homogeneous unit, partaking of the nature of personality, and does not refer to shares of stock. State Board of Equalization v.

People, 191 III. 547; Keokuk, etc., Co. v. People, 161 III. 142; Quincy, etc., Co. v. Adams County, 88 III. 621; Pacific, etc., Co. v. Leib, 83 III. 610; Porter v. Rockford, R. I. & St. L. Co., 76 III., 567.

CAPITAL STOCK OF ANY GAS COMPANY.

The expression "capital stock of any gas company" used in the charter of a corporation empowering it to purchase and hold such stock is broad enough to include the shares of stock of such companies, and may be regarded as the aggregate of all the shares of such stock. People v. Chicago, etc., Co., 130 Ill. 281.

CAPITULA DE JUDAEIS.

A register of mortgages made to the Jews. 2 Bl. Comm. 343; Crabb, Hist. Eng. Law, 130 et seq.

CAPITULATION.

- (1) The treaty which determines the conditions under which a fortified place is abandoned to the commanding officer of the army which besieges it.
- (2) In civil law. An agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered. Wolfflus, § 989.

CAPTIO.

(Lat. from capere, to take.) In old English law and practice. A taking or seizure of a thing, as an animal. Bracton, fol. 156. Est omnis captio justa vel injusta. Fleta lib. 2, c. 44, § 1. Bene cognoscit captionem, (he) well avows the taking. 1 Salk. 3.

A taking or seizure of land. Dies captionis indorsari debet in tergo brevis, the day of the taking ought to be indorsed on the back of the writ. Bracton, fol. 365b.

A taking or arrest of a person. Reg. Orig. 278b; Bracton, fol. 145b. Injusta captio et injusta detentio. Fleta, lib. 1, c. 42, § 1.

A taking or holding of a court. Captio

assisae, the taking of the assize. Bracton, fol. 111, 202b.

A taking or receiving. Homagii captio, taking of homage. Bracton, fol. 16.

CAPTION.

- (1) A taking, or seizing; an arrest. The word is no longer used in this sense.
- (2) The heading of a legal instrument, in which is shown when, where, and by what authority it was taken, found, or executed. Principally used in respect to indictments. See, as to requisites, 3 Gray (Mass.) 454; 1 South. (N. J.) 46. This meaning, now the general one, is not justified by the derivation, which is from capere, to take, and not from caput, a head.

In the English practice, when an inferior court in obedience to the writ of certiorari, returns an indictment into the king's bench, it is annexed to the caption, then called a "schedule," and the caption concludes with stating that "it is presented in manner and form as appears in a certain indictment thereto annexed," and the caption and indictment are returned on separate parchments. 1 Wm. Saund. 309, note 2.

CAPTURE.

The taking of property by one belligerent from another. See 6 Allen (Mass.) 373. It is a taking by the military power, as distinguished from a taking by the civil power, which is known as "seizure." 35 Ga. 344. It originally included only a taking by one belligerent from another, but has been enlarged in usage to include taking by pirates, or the taking by a belligerent of neutral goods. 6 Allen (Mass.) 373; 6 Wall. (U.S.) 10.

CAPUT LUPINUM.

(Lat.) Having a wolf's head. Outlaws were anciently said to have caput lupinum, and might be killed by any one who met them. 4 Bl. Comm. 320. In the reign of Edward III. this power was restricted to the sheriff when armed with lawful process, and this power, even, has

long since disappeared, the process of outlawry being resorted to merely as a means of compelling an appearance. Co. Litt. 128b; 3 Bl. Comm. 284.

CAR BUILDERS.

Carpenters experienced in building cars. Josma v. Western, etc., Co., 249 Ill. 513.

CAR PULLER.

A device used to pull cars by means of a rope attachment hitched to cars and operated by means of a drum or spool, around which the rope winds and unwinds, the power being applied by machinery attached to the engine. Decatur, etc., Co. v. Gogerty, 80 III. App. 635.

CARAT.

A weight equal to three and one-sixth grains, in diamonds and the like. Jacob.

CARDS.

In criminal law. Small rectangular pasteboards, generally of a fine quality, on which are painted figures of various colors, and used for playing certain games. See 4 Pick. (Mass.) 251.

CARE.

Criminal Code.

The word "care," used in section 75 of division 1 of the Criminal Code (J. & A. ¶ 3615), defining embezzlement, is equivalent to "custody," and may mean "charge," "safekeeping," or "security," in which sense the word is used in the statute. Ker v. People, 110 III. 649.

Instruction.

An instruction in an action for negligence in the care of hogs that plaintiff should recover if the hogs were lost through "negligence and want of care" on defendant's part uses the word "care" in the sense of reasonable and ordinary care bestowed by defendant, and does not make defendant liable for the least pos-

sible degree of negligence. Warner v. Dunnavan, 23 Ill. 325.

CARE OF AMERICAN EXPRESS CO.

The words "care of American Express Co." written on a box delivered to a carrier for transportation merely mean that if the consignee named could not be found the goods might be delivered into the care of the express company. Chicago, etc., R. Co. v. Merrill, 48 Ill. 427.

CARGO.

In maritime law. The entire load of a ship or other vessel. 1 Mason (U. S.) 142. "Not the property on board belonging exclusively to the shipowner, but all the property constituting the ship's lading; all the property on which freight and profits were to accrue. 4 Mason (U. S.) 264.

The products of a whaling voyage are "cargo," but the implements used in whaling are not. 11 Pick. (Mass.) 230.

As used in policies of marine insurance, the term has a restricted meaning, derived from usage, which does not include deck load or live stock. 4 Pick. (Mass.) 433; 2 Gill & J. (Md.) 136.

The term is usually applied to goods only, but in a more extensive and less technical sense it includes persons. See 7 Man. & G. 729. 744.

CARLISLE TABLES.

Tables of life expectancy, compiled in about 1780, at Carlisle, England. They are admissible in evidence on questions of expectancy.

CARMACK AMENDMENT.

The purpose of the Carmack amendment to the Hepburn Act was to do away with the difficulties shippers had encountered in seeking to recover damages to property carried over more than one line of railroad, by giving the shipper the right to institute his action against the carrier receiving the property for inter-

state shipment, for damages occurring anywhere in the course of the transportation, leaving it to such carrier to recover from the carrier on whose line the damage occurred. Looney v. Oregon Short Line R. R., 271 Ill. 541.

CARNAL KNOWLEDGE.

Sexual connection. The term is generally, if not exclusively, applied to the act of the male. The term is a technical one, and has been always held adequate to express the idea of sexual bodily connection. 22 Ohio St. 541; 97 Mass. 61.

CARNALLY KNEW.

A technical phrase essential in an indictment to charge the defendant with the crime of rape. No other words nor circumlocution will answer. 1 Hale, P. C. 632; 1 Chit. Crim. Law, 243; Co. Litt. 137.

CARRIAGE.

A street car, running upon rails laid upon the surface of the street and used in the ordinary way under the regulations of the city authorities, is merely another sort of carriage. Chicago B. & Q. R. Co. v. West Chicago S. R. Co., 156 Ill. 265.

CARRIAGE BY LAND OR WATER.

The words "carriage by land or water" in sec. 3 of the Illinois Workmen's Compensation Act, Hurd's Rev. St., ch. 48, relate to those engaged in carriage as an "occupation enterprise or business," and not to those engaged in a business where carriage is an accident. Bishop v. Bowman Dairy Co., 198 Ill. App. 312.

CARRIAGES, COACHES AND OTHER VEHICLES.

A corporation chartered to manufacture and sell "carriages, coaches and other vehicles" may manufacture and sell automobiles. Duer v. Chicago, etc., Co., 194 Ill. App. 316.

CARRIED ON FOR HIS BENEFIT.

Where a creditor's bill is brought to reach property of the judgment debtor standing in the names of other persons, testimony of an indorser on the note on which the judgment is recovered that the bill was being "carried on for his benefit" does not show that the bill was improperly brought in the name of the judgment creditor merely because if the judgment was satisfied such indorser would not be responsible as such, there being no evidence that the money, when collected, was to go to such indorser. Mann v. Ruby, 102 Ill. 350.

CARRIER.

One who undertakes to transport goods from one place to another. 1 Pars. Cont. 632.

CARRYING ON BUSINESS.

Isolated transactions do not constitute carrying on business by a foreign corporation. Finch v. Zenith, etc., Co., 245 Ill. 593.

CART.

A carriage for luggage or burden, with two wheels, as distinguished from a wagon, which has four wheels. Worcester.

The term has been held to include four-wheeled vehicles, to carry out the intent of a statute. 22 Ala. (N. S.) 621.

CARTEL.

An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel.

Cartel ship is a ship commissioned in time of war to exchange prisoners, or to carry any proposals between hostile powers. She must carry no cargo, ammunition, or implements of war, except a single gun for signals.

CASE.

As a Judicial Proceeding.

A question before a court of justice. Bank of Commerce v. Franklin, 88 Ill. App. 199. Any state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice or any question contested before such a court. Lower Salt Fork, etc., Dist. v. Smith, 257 Ill. 55.

Chief Justice Marshall's Definition.

A subject on which the judicial power is capable of acting and which has been submitted to it by a party in the forms required by law. Bank of Commerce v. Franklin, 88 Ill. App. 199.

"Suit" Synonymous.

The word "case," when used in reference to legal proceedings, is ordinarily spoken of synonymously with "suit." Bank of Commerce v. Franklin, 88 Ill. App. 199.

Election Contest Excluded.

The term case would refer more properly to an action at law or a suit in chancery, but does not include a contest of an election. Douglas v. Hutchinson, 183 Ill. 328; Dale v. Irwin, 78 Ill. 175.

CASE AGREED ON.

A statement of facts agreed upon by the parties, and submitted to the court, in order to obtain a decision upon the points of law involved, without going through the forms of a regular trial. 3 Whart. (Pa.) 143.

CASE RESERVED.

A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in banc. This is otherwise called a "special case;" and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for f plaintiff, subject to the opinion co court upon such a case to br stead of obtaining from the verdict. Burrill.

CASE STATED.

In practice. A statement of all the facts of a case, with the names of the witnesses, and a detail of the documents which are to support them; a brief.

An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as there agreed upon and mentioned. 3 Whart. (Pa.) 143.

CASES OF MANDAMUS.

The expression "cases of mandamus," used in section 5 of article 5 of the Constitution of 1848 and in section 2 of article 4 of the Constitution of 1818, relating to the original jurisdiction of the supreme court, have reference to cases of mandamus as existing at common law, and do not include proceedings under the Mandamus Act (J. & A. ¶¶ 7330 et seq.).

CASH.

That which circulates as money. It is generally held to include bank notes. 9 Johns. (N. Y.) 120; 10 Wheat. (U. S.) 347. But see 3 Halst. (N. J.) 172. Treasury notes (3 Conn. 534) and gold dust (1 Cal. 49) have been held not to be cash. See, also, 6 Md. 37; 44 Ala. 402.

Money at command; ready money. 28 Grat. (Va.) 175.

A sale for cash is a sale for money in hand (24 N. J. Law, 101), but a local custom may give the phrase another meaning (3 Mo. App. 149).

CASH BOOK.

A book in which a merchant enters an account of all the cash he receives or pays. An entry of the same thing ought to be made, under the proper dates, in the journal. The object of the cash book is to afford a constant facility to ascertain the true state of a man's cash. Pardessus, note 87.

CASH MONEY.

"The cash money was insufficient by quite a considerable amount to pay the debts and costs of administration. While the words 'cash money' are somewhat more definite than the word 'money' alone, yet it appears clear to us from the context of the will and the circumstances surrounding the testatrix at the time it was made, that she intended to include in those words her money loaned and evidenced by her notes and mortgage." Lich v. Werling, 151 Ill. App. 346.

Where a will bequeathed the remainder of her "cash money" to residuary legatees, and it appeared that testatrix had certain money loaned at the time of her death, evidenced by notes and mortgages, but not enough money to pay debts and costs of administration, the quoted expression is to be construed as including the evidences of indebtedness. Lich v. Werling, 151 Ill. App. 345.

CASH SALE.

Commercial Meaning.

In the language of the commercial world, the term "cash sale" is used to designate sales where the purchaser is to have a short credit, as for example, ten days, or even thirty days. Eau Claire, etc., Co. v. Western, etc., Co., 213 Ill. 586; Anglo-American, etc., Co. v. Prentiss, 157 Ill. 515.

Technical Meaning.

The strict legal signification of the term cash sale is one where delivery and payments are to be concurrent acts and be performed at the same instant of time. Eau Claire, etc., Co. v. Western, etc., Co., 213 Ill. 587; Anglo-American, etc., Co. v. Prentiss, 157 Ill. 515.

CASHIER OF BANK.

An executive officer, by whom its debts are received and paid, and its securities taken and transferred, whose ordinary duties are to keep all the funds of the bank, its notes, bills and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank, and usually receiving directly, or through the subordinate officers of the bank, all the money and notes of

the bank, delivering up all discounted notes and other securities when they have been paid, drawing checks to withdraw the funds of the bank when they have been deposited, and, as the executive officer of the bank, transacting most of its business. First, etc., Bank v. Brooks, 22 Ill. App. 251.

CASHIER'S CHECK.

A cashier's check is a draft. People v. Miller, 278 Ill. 490.

CASSETUR BILLA, OR QUOD BILLA CASSETUR.

(Lat. that the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill (billa). 3 Bl. Comm. 303; Steph. Pl. 128, 131. The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting in fact to a discontinuance of the action. 2 Archb. Prac. K. B. 3, 236; 1 Tidd, Prac. 683.

CASTRATION.

In criminal law. The act of gelding. When this act is maliciously performed upon a man, it is a mayhem, and punishable as such, although the sufferer consented to it. 2 Bish. Crim. Law, §§ 842, 847.

CASUAL.

The word "casual" as used in section 5 of the Illinois Workmen's Compensation Act of 1913 [Callaghan's 1916 St. Supp. ¶ 5475 (5)], providing that the term "employee" as used in the act shall be construed to mean every person in the service of another under any contract of hire, express or implied, oral or written, but not including any person whose employment is but casual or who is not engaged in the usual course of the trade, business, profession or occupation of his

employer, means occasional, irregular or incidental, in contradistinction from stated or regular. Aurora Brewing Co. v. The Industrial Board of Illinois, 277 Ill. 142.

CASUALTY.

Misfortune occasioned by an accident; that which comes by chance, or without design, or without being foreseen. John Morris Co. v. Southworth, 154 Ill. 119.

That which comes without design or without being foreseen; contingency. M:land v. Meiswinkel, 82 Ill. App. 526. See also John Morris Co. v. Southworth, 154 Ill. 119 (quoting first sentence of the above definition).

CASUS FOEDERIS.

(Lat.) In international law. A case within the stipulations of a treaty.

The question whether, in a case of a treaty of alliance, a nation is bound to assist its ally in war against a third nation, is determined in a great measure by the justice or injustice of the war. If manifestly unjust on the part of the ally, it cannot be considered as casus foederis. Grotius de Jure Belli, bk. 2, c. 25; Vattel, bk. 2, c. 12, § 168. See 1 Kent, Comm.

CASUS FORTUITUS.

(Lat.) An inevitable accident; a loss happening in spite of all human effort and sagacity. 3 Kent, Comm. 217, 300.

It includes such perils of the sea as strokes of lightning, etc. A loss happening through the agency of rats was held an unforeseen, but not an inevitable, accident. 1 Curt. C. C. (U. S.) 148. The happening of a casus fortuitus excuses ship owners from liability for goods conveyed. 3 Kent, Comm. 216.

CASUS OMISSUS.

(Lat.) A case which is not provided for. When such cases arise in statutes which are intended to provide for all cases of a given character which may arise, the common law governs. 5 Coke, 38; 11 East, 1; 2 Bin. (Pa.) 279; 2 Sharswood, Bl. Comm. 260; Brown, Max. 37. A casus omissus may occur in a contract as well as in a statute. 2 Sharswood, Bl. Comm. 260.

CATALLA.

A Latin word, primarily signifying "beasts of husbandry." Chicago & A. R. Co. v. Thompson, 19 Ill. 584.

Chattels, or catals, as anciently written. A term including all property movable and immovable, except fees and freeholds. This word is considered by Spelman as derived, by contraction, from capitalia. The singular, catallum (q. v.), rarely occurs, although Bracton uses it in sev-Catalla, according to the eral places. same writer, had nearly or quite the sense of averia (beasts or cattle), being demandable under that name. Bracton, fol. 159b. It seems to have been, from a very early period, united with the word bona, in the phrase bona et catalla, of which the familiar modern phrase "goods and chattels" is a translation. Bracton, fol. 60b; Reg. Orig. 140, 141.

CATCH-BASIN.

There is no variance between an allegation that plaintiff fell into a hole over and into a "catch-basin" in a street and proof that plaintiff fell into a sewer inlet in such street designed to carry off the water from the street into the catchbasin. Chicago v. Seben, 165 Ill. 376.

CATCHING BARGAIN.

An agreement made with an heir expectant for the purchase of his expectancy at an inadequate price. Any agreement whether by sale, mortgage, or post obit bond, on insufficient consideration, to be performed by the heir on the vesting of his expectancy. 47 Mich. 94; 7 Mass. 112; 63 Pa. St. 448; 34 Me. 447.

CATHOLIC BIBLE.

The Douay version of the Bible, of which the Old Testament was published

by the English College at Douay, France, in 1609, and the New Testament by the English College at Rheims, in 1582. People v. Board of Education, 245 Ill. 343.

CATTLE.

Horse and Ass Included.

The term "cattle" includes horses and asses as well as domesticated horned animals. Ohio, etc., R. Co. v. Brubaker, 47 Ill. 463.

CAUSE.

That which supplies the motive, or constitutes the reason, for any act.

In Civil Law.

The consideration or motive for making a contract. Dig. 2. 14, 7; Toullier, Dr. Civ. liv. 3, tit, 3, c. 2, § 4.

In Pleading. Reason; motive.

In a replication de injuria, for example, the plaintiff alleges that the defendant of his own wrong and without the cause by him, etc., where the word "cause" comprehends all the facts alleged as an excuse or reason for doing the act. 1 Chit. Pl. 585.

In Practice.

A suit or action; any question, civil or criminal, contested before a court of justice. Wood, Civ. Law, 301. It does not include a quo warranto proceeding (5 El. & Bl. 1), but includes a criminal prosecution (3 Q. B. 901).

Practice Act.

The word "cause," used in section 84 of the Practice Act of 1874, now section 114 of the Practice Act (J. & A. ¶ 8651), relating to the abandonment of actions where no transcript of the remanding order is filled within a named time, refers to the particular suit in which the order is made, and does not refer to the cause of action on which the action is based. Fish v. Farwell, 160 Ill. 250; Philadelphia, etc., Co. v. Chicago, 158 Ill. 14; Koon v. Nichols, 85 Ill. 156.

CAUSE OF ACTION.

Nature.

The thing done or omitted to be done which confers the right upon the other to sue,-that is, the wrong against the plaintiffs which caused a grievance for which the law gives a remedy. Greene v. Fish, etc., Co., 272 Ill. 156; Vogrin v. American, etc., Co., 263 Ill. 478; Lee v. Republic, etc., Co., 241 Ill. 379; Mooney v. Chicago, 239 Ill. 423; Swift v. Gaylord, 229 Ill. 334; Evanston v. Richards, 224 Ill. 446; South Chicago C. Ry. Co. v. Kinnare, 216 Ill. 452; Wabash R. Co. v. Bhymer, 214 Ill. 586; Cicero v. Bartelme, 212 Ill. 259; Chicago C. Ry. Co. v. Mc-Meen, 206 Ill. 118; Chicago C. Ry. Co. v. Leach, 117 Ill. App. 170; 80 Ill. App. 355; Illinois C. R. Co. v. Campbell, 170 Ill. 167; Swift v. Madden, 165 Ill. 45; Lee v. Republic, etc., Co., 148 Ill. App. 590; South Chicago C. Ry. Co. v. Kinnare, 117 Ill. App. 4; Cohen v. Chicago & N. W. Ry. Co., 104 Ill. App. 317.

Matter for which an action may be brought. Smart v. Morrison, 15 Ill. App. 229.

The right to bring an action, which implies that there is some person in existence who can assert, and also a person who can lawfully be sued. Walters v. Ottawa, 240 Ill. 263; Parker v. Enslow, 102 Ill. 276; Elliott v. Knight, 64 Ill. App. 89; Fruitt v. Anderson, 12 Ill. App. 430.

"Right of Action" Synonymous.

The terms "cause of action" and "right of action" are equivalent expressions. Walters v. Ottawa, 240 Ill. 263.

A cause of action is said to accrue to any person when that person first comes to a right to bring an action. There is, however, an obvious distinction between a cause of action and a right, though a cause of action generally confers a right. Thus, statutes of limitation do not affect the cause of action, but take away the right. It is synonymous with "right of action" (26 How. Pr. [N. Y.] 108), but not with "chose in action" (10 How. Pr. [N. Y.] 1.)

Negligence-Elements.

The essential elements of a cause of action for negligence are: (1) The existence of a duty on the part of the person charged to protect the complaining party from the injury received; (2) a failure to perform that duty; and (3) an injury resulting from such failure. Devaney v. Otis, etc., Co., 251 Ill. 33.

What Is Included.

"Cause of Action" includes every fact necessary for the plaintiff to prove to entitle him to succeed,—every fact that the defendant would have a right to traverse, and has been said to be the right to prosecute an action with effect. Walters v. City of Ottawa, 240 Ill. 263.

Injuries Act.

In actions under section 1 of the Injuries Act (J. & A. ¶6184), creating a right of action for death caused by wrongful act, is the wrongful act, neglect, or default causing death, and not the death itself. Mooney v. Chicago, 239 III. 423; Crane v. Chicago & W. I. R. Co., 233 III. 261; Holton v. Daly, 106 III. 137.

CAUSE OF ACTION ACCRUED.

The expression "cause of action accrued," used in the Bankruptcy Act of 1867 in the section relating to limitations of actions against the assignee, relates to a subject matter on which a suit might be brought based on a cause of action, referring to actions, or cases in equity of that nature, and does not apply to a writ of error brought in a suit commenced before the expiration of the time limited by the statute. Jenkins v. International Bank, 9 Ill. App. 459.

CAUSED.

The word "caused," used in section 1 of the Injuries Act (J. & A. ¶6184), relating to actions to recover for death by reason of wrongful act, refers to the direct cause which, without the intervention of any other cause, produces death and not to a failure on the part of a physician, by not operating, to arrest the

natural progress of accidental injuries. Martin v. St. Luke's Hospital, 195 Ill. App. 390.

CAUSED BY INTOXICATION IN WHOLE OR IN PART PRODUCED.

An instruction in an action under section 9 of the Dramshop Act (J. & A. ¶ 4609), creating a right of action for injuries suffered as a result of the sale of intoxicating liquor, using the expression "caused from intoxication in whole or in part produced" by liquor sold by defendant to the deceased husband of the woman for whose benefit the action was brought, means in whole or in part produced by the liquor, and does not mean "intoxication in whole or in part," or "caused from intoxication in whole or in part." Smith v. People, 141 Ill. 452.

CAUSES IN LAW.

Causes having an actor, reus and judex are "causes in law" within the meaning of section 12 of article 6 of the Constitution of 1870, relating to the jurisdiction of circuit courts. Hundley v. Commissioners of Lincoln Park, 67 III. 563.

CAVEAT.

(Lat. let him beware).

In Practice.

A notice not to do an act, given to some officer, ministerial or judicial, by a party having an interest in the matter.

It is a formal caution or warning not to do the act mentioned, and is addressed frequently to prevent the admission to probate of wills, the granting letters of administration, etc. 1 Bouv. Inst. 71, 534; 3 Bl. Comm. 246; 2 Chit. Prac. 502, note b; 3 Bin. (Pa.) 314; 3 Halst. (N. J.) 139.

It is also used to prevent the issuance of a patent for lands. See 9 Grat. (Va.) 508.

In Patent Law.

A legal notice not to issue a patent of a particular description to any other person without allowing the caveator an opportunity to establish his priority of invention. It is filed in the patent office under statutory regulations. The principal object of filing it is to obtain for an inventor time to perfect his invention without the risk of having a patent granted to another person for the same thing. Rev. St. U. S. § 4902.

CAVEAT EMPTOR.

(Lat. Let the buyer beware.) A maxim employed in the law to signify that a purchaser, whether of realty or personalty, is not only bound to discover obvious defects for himself, but is confined to the warranties which he has required, and cannot, in the absence of fraud, rely on the statements of the seller. Benj. Sales, 611; 17 Pick. (Mass.) 475; 10 Ga. 311; 9 N. Y. 36; 10 Wall. (U. S.) 383; 53 N. Y. 515.

\s an exception to the rule, there is, however, an implied warranty of title. 88 Ga. 629.

CAVEAT EMPTOR; QUI IGNORARE NON DEBUIT QUOD JUS ALIENUM EMIT.

Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another. Hob. 99; Broom, Leg. Max. (3d London Ed.) 690; Co. Litt. 102a; 3 Taunt. 439; 1 Bouv. Inst. 383; Sugd. Vend. (13th Ed.) 272 et seq.; 1 Story, Eq. Jur. (6th Ed.) c. 6.

CEASE TO BE OPERATED.

A mill in which work is temporarily suspended for want of materials or partially suspended for any reason, does not "cease to be operated" within the meaning of a policy of fire insurance providing that in such case the policy shall be void. American, etc., Co. v. Brighton, etc., Co., 125 Ill. 140.

CELATION.

In medical jurisprudence. Concealment of pregnancy or delivery. Dungl. Med. Dict.

CEMETERY.

A place or ground set apart for the burial of the dead. Concordia, etc., Ass'n v. Minnesota & N. W. R. Co., 121 Ill. 210.

CENT.

(Lat. centum, one hundred.) A coin of the United States, weighing seventytwo grains, and composed of eighty-eight per centum of copper and twelve of nickel. Act Feb. 21, 1857, § 4. See 11 U. S. St. at Large, 163, 164.

CENTENA.

(Law Lat. from centum, a hundred.) A hundred; a district or division containing originally a hundred freemen, estabthe Goths, Germans, lished among Franks, and Lombards, for military and civil purposes, and answering to the Saxon hundred. Spelman; 1 Bl. Comm. 115; Esprit des Lois, liv. 30, c. 17. The Saxon division is also sometimes called centena, but is more commonly rendered in law Latin, hundredum, or hundredus. Spelman.

- In Old Records and Pleadings.

A hundred weight. Centena piscium, a hundred weight of fish. Pryn. 303. Centena cerae zucarii, piperis, cumini, etc., continet tredecim petras et dimidium, the hundred weight of wax, sugar, pepper, cummin, etc., contains thirteen stone and a half. Fleta, lib. 2, c. 12, 4. See Cro. Eliz. 754.

CENTER LINE OF THE RAILROAD.

The words "center line of the railroad," used in a deed in describing the land granted, refer to the center of the railway track as a monument which aids in determining a certain boundary, and not to the center of the right of way. Peoria & P. U. Ry. Co. v. Tamplin, 156 Ill. 294.

CENTRAL RAILROAD.

Section 7 of the act of Congress of

the purpose of constructing a railroad from the southern terminus of the Illinois and Michigan Canal to Mobile, and providing that in order to aid in the continuation of said "Central railroad" certain privileges shall be granted to two of the states, has reference by the quoted expression, merely to the location of the proposed railroad and is not intended to designate that railroad as the property of the Illinois Central Railroad Company or of any other company. Board of Equalization v. People, 229 Ill. 452.

CERT MONEY.

The head money given by the tenants of several manors yearly to the lords, for the purpose of keeping up certain inferior Called in the ancient records courts. certum letae (leet money). Cowell.

CERTAIN SERVICES.

In feudal and old English law. Such services as were stinted (limited or defined) in quantity, and could not be exceeded on any pretense; as to pay a stated annual rent, or to plow such a field for three days. 2 Bl. Comm. 61.

CERTAINTY.

Contracts.

Within the meaning of the rule that a contract must be proved with certainty as declared on, the term "certainty" means, not absolute preciseness or certainty without any doubt, but certainty to a certain intent in general-in other words, the contract must be substantially proved; and this is the doctrine of all the books. Wheeler v. Reed, 36 Ill. 87.

A thing is certain when its essence, quality, and quantity are described, distinctly set forth, etc. Dig. 12. 1. 6. It is uncertain when the description is not that of an individual object, but designates only the kind. Civ. Code La. art. 3522, No. 8; 5 Coke, 121.

Pleading.

Chitty on Pleading (vol. 1, page 232) 1850, granting land to several states for | says: "A general statement of facts which admits of almost any proof to sustain it, is objectionable. The principal rule as to the mode of stating the fact is. that they must be set forth with certainty, by which term is signified a clear and distinct statement of the facts which constitute the cause of action or ground of defense, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the court who are to give judgment." In Cook v. Scott, 1 Gilm. 333, this court held: "The province of the declaration is to exhibit upon the record the grounds of the plaintiff's cause of action, as well for the purpose of notifying the defendant of the precise character of those grounds as of regulating his own proofs."

It is a familiar rule that each pleading must be sufficiently certain to apprise the opposite party of what he is required to meet on the trial, and the court of the issue presented. O. & M. Ry. Co. v. The People ex rel., 149 Ill. 666, 667.

Within the meaning of the rule that facts in a pleading must be set out with "certainty," the word "certainty" means a clear and distinct statement of the facts which constitute the cause of action or ground of defense, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the court who are to give judgment. Ohio & M. Ry. Co. v. People, 149 Ill. 666.

Certainty is said to be of three sorts:

- (1) "Certainty to a common intent," which is attained by a form of statement in which words are used in their ordinary meaning, though by argument or inference they may be made to bear a different one. See 2 H. Bl. 530.
- (2) "Certainty to a certain intent in general," which is attained when the meaning of the statute may be understood upon a fair and reasonable construction, without recurrence to possible facts which do not appear. 1 Wm. Saund. 49; 9 Johns. (N. Y.) 317; 5 Conn. 423.
- (3) "Certainty to a certain intent in particular," which is attained by that technical accuracy of statement which precludes all argument, inference, and

presumption against the party pleading. When this certainty is required, the party must not only state the facts of his case in the most precise way, but add to them such as show that they are not to be controverted, and, as it were, anticipate the case of his adversary. 1 Chit. Pl. 258; Lawes, Pl. 54, 55.

CERTIFICATE.

In practice. A writing made in any court, and properly authenticated, to give notice to another court of anything done therein. A written statement, by a person having an official or public status, concerning some matter within his knowledge or authority. 3 Pet. (U. S.) 29; 6 Serg. & R. (Pa.) 324.

CERTIFICATE OF DEPOSIT.

A certificate of deposit is, in fact and in law, a promissory note for the payment of money. Keating v. People, 160 Ill. 486; Telford v. Patton, 144 Ill. 619; Laughlin v. Marshall, 19 Ill. 392. To the same effect see Hunt v. Divine, 37 Ill. 143; Bank of Peru v. Farnsworth, 18 Ill. 565; Evans v. Illinois Surety Co., 209 Ill. App. 465.

CERTIFICATE OF EVIDENCE.

Function.

The sole office or function of a certificate of evidence in chancery causes, as its very name implies, is to truly set forth the evidence offered, rejected, received and considered on the hearing. Flaherty v. McCormick, 123 Ill. 533; McReynolds v. Brown, 121 Ill. App. 264.

No Seal Required.

A certificate of evidence does not require a seal. Grand Lodge v. Ehlman, 246 Ill. 558.

CERTIFICATE OF REGISTRY.

A certificate that a ship has been registered as the law requires. 3 Kent, Comm. 149. Under the United States statutes, "every alteration in the property of a

ship must be indorsed on the certificate of registry, and must itself be registered." Unless this is done, the ship or vessel loses its national privileges as an American vessel. 1 Pars. Mar. Law, 48. The English statute makes such a transfer void. St. 3 & 4 Wm. IV. c. 54.

CERTIFICATE OF STOCK.

A certificate of stock is not the stock itself, or property in the assets of the corporation, but is merely the evidence of ownership of stock. People v. Goss, etc., Co., 99 Ill. 363; Allmon v. Salem, etc., Ass'n, 194 Ill. App. 230; Colton v. Williams, 65 Ill. App. 468.

CERTIFICATE, TRIAL BY.

This is a mode of trial now little in use. It is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. Steph. Pl. 112, 113; Co. Litt, 74; Brown.

CERTIFIED CHECK.

In legal contemplation and effect a certified check is a certificate of deposit. Wright v. MacCarty, 92 Ill. App. 123.

CERTIFIED TO BY THE OFFICER OR BOARD.

Section 3 of the act of 1875, known as the Sidewalks Act, providing that the bill of cost of a sidewalk shall be "certified to by the officer or board" designated by the ordinance providing for the sidewalk is not complied with where a bill of costs is made out and marked "approved," and signed by a village president and the board of trustees of the village constructing the sidewalk, although following such signatures was a certificate of such bill of costs, signed by members of a "street committee," as required by the ordinance. People v. Patton, 223 Ill. 381.

CERTIFY.

To testify to in writing; to make known or establish as a fact. Chicago, etc., R. Co. v. People, 200 Ill. 243.

CERTIORARI.

The office of the common law writ of certiorari is to bring before the court the proceedings of inferior tribunals or officers acting judicially in cases where they exceed their jurisdiction or where they proceed illegally and there is no appeal or other mode provided for directly reviewing their proceedings. Cass v. Duncan, 260 Ill. 230; People v. Superior Court, 234 Ill. 200; Sanner v. Union, etc., District, 175 Ill. 582: Glennon v. Britton, 155 Ill. 237; Commissioners of Drainage District v. Griffin, 134 Ill. 340; Lees v. Drainage District, 125 Ill. 49; Gerdes v. Champion, 108 Ill. 141; Hyslop v. Finch, 99 Ill. 184; Miller v. Trustees of Schools, 88 Ill. 33; Commissioners v. Harper, 38 Ill. 107; Commissioners of Highways v. Carthage, 27 Ill. 143; Chicago & R. I. R. Co. v. Fell, 22 Ill. 335; Chicago & R. I. R. Co. v. Whipple, 22 Ill. 107; Doolittle v. Galena & C. U. R. Co., 14 Ill. 382; People v. Wilkinson, 13 Ill. 661. To the same effect see People v. McGoorty, 270 Ill. 619: Conover v. Gatton. 251 Ill. 591: Hamilton v. Harwood, 113 Ill. 154; Deer v. Commissioners of Highways, 109 Ill. 383; Peterson v. Lawrence, 20 Ill. App. 638; Randolph v. County Board, 19 Ill. App. 101.

The common law writ of certiorari is not a writ of right, and issues only upon application to the court and for special cause. Clark v. Chicago, 233 Ill. 114; Trustees of Schools v. School Directors, 88 Ill. 101.

A writ issued by a superior to an inferior court of record, requiring the latter to send in to the former some proceeding therein pending, or the records and proceedings in some cause already terminated in cases where the procedure is not according to the course of the common law. 112 Mass. 206.

The office of the writs of certiorari and

mandamus is often much the same. It is the practice of the United States supreme court, upon a suggestion of any defect in the transcript of the record sent up into that court upon a writ of error, to allow a special certiorari, requiring the court below to certify more fully. 3 Dall. (U. S.) 411; 7 Cranch (U. S.) 288; 3 How. (U. S.) 553. The same result might also be effected by a writ of mandamus.

CERTUM EST QUOD CERTUM REDDI POTEST.

That is sufficiently certain which can be made certain. Noy, Max. 481; Co. Litt. 45b, 96a, 142a; 2 Sharswood, Bl. Comm. 143; 2 Maule & S. 50; Broom, Leg. Max. (3d London Ed.) 555-558; 3 Term R. 463; 4 Cruise, Dig. (4th Ed.) 269; 3 Mylne & K. Ch. 353; 11 Cush. (Mass.) 380.

CESSANTE RATIONE LEGIS CESSAT, ET IPSA LEX.

Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself. 4 Coke, 38; 7 Coke, 69; Co. Litt. 70b, 122a; Broom, Leg. Max. (3d London Ed.) 151, 152; 4 Rep. 38; 13 East, 348; 4 Bing. N. C. 388.

CESSAVIT PER BIENNIUM.

(Lat. he has ceased for two years.) In practice. An obsolete writ, which could formerly have been sued out when the defendant had for two years ceased to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. Fitzh. Nat. Brev. 208. It also lay where a religious house held lands on condition of performing certain spiritual services, which it failed to do. 3 Bl. Comm. 232.

CESSIO IN JURE.

In Roman law. A fictitious suit, in which the person who was to acquire the thing claimed (vindicabat) the thing as

his own, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (addicebat) of the claimant. Sandars, Just. Inst. (5th Ed.) 89, 122.

C'EST ASCAVOIR.

(Law Fr.) That is to say, or to wit. Generally written as one word, cestascavoir, cestascavoire.

Another form was cest asaver, and in one word, cestasaver.

CESTUI QUE TRUST.

He for whose benefit another person is seized of lands or tenements, or is possessed of personal property. He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. 2 Washb. Real Prop. 163.

Judge Story suggests (1 Eq.Jur. § 321) that the word "beneficiary" be substituted for cestui que trust, and this term has come into very general use as such a substitute.

CESTUI QUE USE.

He for whose benefit land is held by another person. He who has a right to take the profits of lands of which another has the legal title and possession, together with the duty of defending the same, and to direct the making estates thereof. White & T. Lead. Cas. 252; 2 Bl. Comm. 330. See 2 Washb. Real Prop. 95. See "Use."

CESTUY QUE DOIT INHERITER AL PERE DOIT INHERITER AL FILS.

He who would have been heir to the father of the deceased shall also be heir of the son. Fitzh. Abr. "Descent" (2); 2 Bl. Comm. 239, 250.

CF.

Abbreviation of conferre, compare.

CHAFFERS.

Anciently signified wares and merchandise. Hence the word chaffering, which is yet used for buying and selling, or beating down the price of an article. The word is used in St. 3 Edw. III. c. 4.

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE.

In the English house of commons, this officer, always a member, is elected by the house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside. He sits, not in the speaker's chair, but at the table in the seat of the clerk of the house. On divisions, when the numbers happen to be equal, he gives the casting vote (q. v.), but in committees he never otherwise votes. In August, 1853, it was, by resolution of the house, decided that, during the unavoidable absence of the speaker, this officer should preside in his stead, being only so appointed, however, from day to day. See 18 & 19 Vict. c. 84. In the house of lords the chairman of committees of the whole house is elected by the house every session. He usually holds in addition the office of deputy speaker of the house of lords. Dod. Parl. Comp.

CHALDRON.

A measure of capacity equal to fiftyeight and two-thirds cubic feet, nearly.

CHALLENGE.

An objection to the capacity or right of a person.

- In Practice.

An exception to the jurors who have been arrayed to pass upon a cause on its trial.

An exception to those who have been returned as jurors. Co. Litt. 155b.

The most satisfactory derivation of

the word is that adopted by Webster and Crabb, from "call," challenge implying a calling off. The word is also used to denote exceptions taken to a judge's capacity on account of interest (2 Bin. [Pa.] 454; 4 Bin. [Pa.] 349), and to the sheriff for favor as well as affinity (Co. Litt, 158a; 10 Serg. & R. [Pa.] 336; 11 Serg. & R. [Pa.] 333;

Challenges are of the following classes: (1) To the array. Those which apply to all the jurors as arrayed or set in order by the officer upon the panel. Such a challenge is, in general, founded upon some error or manifest partiality committed in obtaining the panel, and which, from its nature, applies to all the jurors so obtained. These are not allowed in the United States generally (Colby, Prac. 235; 2 Blatchf. [U. S.] 435), the same end being attained by a motion addressed to the court, but are in some states (33 Pa. St. 338; 12 Tex. 252; 24 Miss. 445; 1 Mann [Mich.] 451; 20 Conn. 510; 1 Zab. [N. J.] 656).

- (2) To the poll. Those made separately to each juror to whom they apply.
 - Challenges to the poll are either:
- (a) For cause,—those for which some reason sanctioned by law is assigned.
- (b) Peremptory,—those made without assigning any cause, and which must be allowed as of course. The number of these is variously limited by statute.

A challenge for cause lies also to the array. Challenge for cause was anciently divided into challenges:

(i) For principal cause,—being for such cause as, if substantiated, was sufficient to show bias or disqualification. The grounds of principal challenge were propter defectum, for disability, as infancy or mental unsoundness; propter affectum, for partiality, as where the juror was of kin to the party, or bore some confidential relation to him; propter delictum, on account of crime committed by the juror, whereby he was disqualified. 3 Bl. Comm. 361. To these was sometimes added propter honoris respectum, from respect to a party's rank or nobility.

(ii) To the favor,—those which are founded on reasonable ground to suspect

that the jury is partial, though the cause be not so evident as to warrant a principal challenge. Magruder, J., dissenting opinion, Coughlin v. People 144 Ill. 194.

Challenges for principal cause were tried by the court; those to the favor by triors.

The distinction between challenges to the favor and for the principal cause is now obsolete.

CHAMBERLAIN.

(Law Lat. camerarius cambellarius, combalarius, chamberlanus, chamberlanus, chamberlingus; from Fr. chambellan.) Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (camera) of the prince or state; otherwise called "treasurer." Cowell. voc. "Chamberlain." Sir William Cavendish was treasurer of the chamber in the 24th year of Edward III. 3 Coke, 12; Spelman; Cowell.

The receiver of the rents and revenues of a city. Cowell; Blount. This is the modern meaning of the word in various cities of England and America.

The name of several high officers of state in England, as the lord great chamberlain of England, lord chamberlain of the household, chamberlain of the exchequer. See Cowell; Blount; Holthouse; Wharton. In modern times, the court officer styled "chamberlain" has the charge of the private apartments of the sovereign or noble to whom he is attached. Brande.

CHAMPERTOR.

In criminal law. One who makes pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain. St. 33 Edw. 1 st. 2.

CHAMPERTOUS CONTRACT.

A contract whereby an attorney agrees to prosecute litigation at his own cost and expense is champertous. Phillips v. South Park Commissioners, 119 Ill. 636.

One that gives to an attorney or a third person, a portion of the land or other matter sued for. Neal v. Franklin County, 43 Ill. App. 268.

CHAMPERTY.

A bargain by which a person agrees to carry on a suit at his own expense for the recovery of another's property, on condition of dividing the proceeds. Torrence v. Shedd, 112 Ill. 475.

A bargain with a plaintiff or defendant campum partire, to divide the land or other matter sued for, between them, if they prevail at law, whereupon the champerter is to carry on the parties' own suit at his own expense. Torrence v. Shedd et al., 112 Ill. 475; Park Commissioners v. Coleman, 108 Ill. 601; Thompson v. Reynolds, 73 Ill. 13. See also Granat v. Kruse, 114 Ill. App. 490 (quoting part of foregoing definition).

There are two essential elements in every champertous agreement: first, there · must be an undertaking by one person to defray the expenses, in whole or in part, of another's suit; second, an agreement or promise on the part of the latter to divide with the former the proceeds of the litigation in the event the prosecution was successful. Brush v. Carbondale, 229 Ill. 152; Torrence v. Shedd, To the same effect see 112 Ill. 475. Rieman v. Morrison, 264 Ill. 286; Phillips v. South Park Commissioners, 119 Ill. 636; Park Commissioners v. Coleman, 108 Ill. 601.

A bargain with a plaintiff or defendant, in a suit for a portion of the land or other matter sued for, in case of a successful termination of the suit which the champertor undertakes to carry on at his own expense. 4 Bl. Comm. 435.

"The unlawful maintenance of a suit in consideration of part of the debt or other thing in dispute." Hawk. P. C. c. 84, § 1.

The gist of the offense consists in the mode of compensation, irrespective of the particular manner in which the suit is to be maintained. 4 Kern. (N. Y.) 289; 1 Hawk. P. C. 455, §§ 5-11.

There must be an actual assistance, and not merely an offer to assist. 1 Hempst. 300.

On the other hand, it has been held, following the definition of Blackstone, that a promise to pay the expenses or costs is essential. 57 Ga. 263; 13 Ohio 167.

It is not essential that there be a suit commenced at the time of making the agreement. 14 Ky. 412.

Champerty differs from maintenance chiefly in this, that in champerty the compensation to be given for the service rendered is a part of the matter in suit, or some profit growing out of it (16 Ala. 488; 24 Ala. [N. S.] 472; 9 Metc. [Mass.] 489; 1 Jones, Eq. [N. C.] 100; 5 Johns. Ch. [N. Y.] 44; 4 Litt. [Ky.] 117), while in simple maintenance the question of compensation does not enter into the account (2 Bish. Crim. Law, § 111). See 4 Bl. Comm. 134, note.

CHANCE.

Chance is always undeterminable; it neither forms nor designs; intention is never attributed to it; its events are uncertain. Thomas v. People, 59 Ill. 165.

"Pure chance consists in the absence of all means of calculating results." Morris (Iowa) 169. It is to be distinguished from "accident," which is "the unusual prevention of an effect naturally resulting from the means employed." Morris (Iowa) 169.

CHANCE-MEDLEY.

In criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens in defending one's self. 4 Bl. Comm. 184.

CHANCELLOR OF DIOCESE.

A judicial officer who acts as the delegate of the bishop in hearing ecclesiastical causes, etc. The office generally includes in it two other offices,—that of

official principal, and that of vicar general (q. v.; and see "Court of Arches"). Phillim. Ecc. Law, 1208; 1 Bl. Comm. 382.

CHANCELLOR OF THE DUCHY OF LANCASTER.

In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. This is a special jurisdiction concerning all manner of equity relating to lands holden of the king in right of the duchy of Lancaster, Hob. 77; 3 Bl. Comm. 78.

CHANCELLOR OF THE EXCHEQ-UER.

A minister of state who presides in the exchequer, and takes care of the interests of the crown, in addition to his other parliamentary duties. With the lord treasurer, he leases the crown lands, and the two offices are often granted to the same person. Wharton. In addition to his duties in reference to the treasury of the king, the chancellor also sat as one of the judges in the equity court. 3 Bl. Comm. 45.

CHANCELLOR, THE LORD HIGH.

The lord high chancellor of Great Britain is "created by the mere delivery of the king's great seal into his custody, whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord. He is a privy councillor by his office, and according to Lord Chancellor Ellesmere, prolocutor (or speaker) of the house of lords by prescription. To him (under the crown) belongs the appointment of all justices of the peace throughout the kingdom. Being formerly usually an ecclesiastic (for none else were then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the king's conscience, vis-

itor (in right of the king) of all hospitals and colleges of the king's foundation, and patron of all the king's livings under the value of twenty marks per annum in the king's books. Twelve canonries and 650 livings are now in the gift of the lord chancellor. Second Rep. Leg. Dep. Comm. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses in the kingdom." 3 Bl. Comm. 47. See Butler's note to Co. Litt. 209b. He was formerly the principal judge of the court of chancery, and is now president of the court of appeal, of the high court of justice, and of the chancery division of the high court, and acts as president of the house of lords when sitting as a court of appeal. He is therefore, of course, a barrister, and, as a rule, has previously either been attorney or solicitor general, or held some judicial office. He is also a cabinet minister, and has charge, in the house of lords, of all legal measures brought forward by the government.

CHANCELLORS' COURTS IN THE TWO UNIVERSITIES.

In English law. Courts of local jurisdiction in and for the two universities of Oxford and Cambridge in England. These courts have jurisdiction of all civil actions or suits, except those in which a right of freehold is involved, and of all criminal offenses and misdemeanors, under the degree of treason, felony, or mayhem, at Oxford when a scholar or privileged person is one of the parties, and at Cambridge when both parties are scholars or privileged persons, and the cause of action arose within the town of Cambridge or its suburbs. 3 Sharswood, Bl. Comm. 83, note; St. 19 & 20 Vict. c. 17, § 18; St. 19 & 20 Vict. c. 88; Rep. temp. Hardw. 241; 2 Wils. 406; 12 East, 12; 13 East, 635; 15 East, 634.

CHANDLER AND PRICE PRESS.

A variety of the type of printing presses known as "Gordon" presses. Jefferson, etc., Co. v. Crejczyk, 125 Ill. App. 5.

CHANGE.

As Applied to Money-Verb.

As applied to money, the verb "change" means to convey it to some one who would give what in popular language is denominated "change," in exchange for it. Murphy v. People, 104 Ill. 535.

As Applied to Money-Noun.

As applied to money, the noun "change" means bills, or gold or silver coins, or some of each, of lesser denominations, in amount of equal value. Murphy v. People, 104 Ill. 535.

Fire Insurance.

A policy of fire insurance providing that the policy should be void if any "change" take place in the title or possession of the property insured is not forfeited by mortgaging the house. Hartford, etc., Co. v. Walsh, 54 Ill. 169.

Where a policy of fire insurance placed on property on which there was an existing mortgage provided that the policy should be forfeited if the property be sold, transferred or any "change" takes place in the title or possession, the fore-closure of the mortgage and deeds in pursuance of the foreclosure sale are such a change in the title as will avoid the policy. Commercial, etc., Co. v. Scammon, 102 Ill. 49.

A policy of fire insurance providing that if a "change" take place in the title or possession of the insured premises the policy should be void is not avoided by giving a deed of the premises intended merely as security, although absolute in form, and not followed by a transfer of possession. German, etc., Co. v. Gibe, 162 Ill. 257.

A policy of fire insurance providing that the policy shall be void in case of a "change of title" to the insured premises is not avoided by the change in title of such premises due to the death of insurer by suicide or otherwise, although the quoted expression might be broad enough to include such a change if used otherwise than in an insurance policy, where all doubtful questions as to construction of words are to be resolved

against the insurer. Forest City, etc., Co. v. Hardesty, 182 Ill. 46.

"Alienation" Compared.

The expression "change of title," used in a fire insurance policy with reference to real estate, is more comprehensive than "alienation," and includes all modes known to the law. Miller v. German, etc., Co., 54 Ill. App. 56.

CHANNEL.

When used in relation to the navigation of rivers, the word "channel" indicates the line of deep water which vessels follow. Buttenuth v. St. Louis, etc., Co., 123 Ill. 547.

The bed of a stream of water; especially the deeper part of a river or bay where the main current flows. Buttenuth v. St. Louis, etc., Co., 123 Ill. 547.

The channel of a stream, in its larger sense, is its bed from bank to bank; the hollow or course in which the water flows. Prairie Du Rocher v. Schoening-Koenigsmark, etc., Co., 248 Ill. 59.

CHAPTER.

In ecclesiastical law. A congregation of clergymen. Such an assembly is termed capitulum, which signifies a little head; it being a kind of head, not only to govern the diocese in the vacation of the bishopric, but also for other purposes. Co. Litt. 103.

CHARACTER.

The opinion generally entertained of a person derived from the common report of the people who are acquainted with him. 3 Serg. & R. (Pa.) 336; 3 Mass. 192; 3 Esp. 236; 40 Neb. 810.

The moral character and conduct of a person in society may be used in proof before a jury in three classes of cases: First, to afford a presumption that a particular party has not been guilty of a criminal act (17 Mich. 9; 14 Mo. 502); second, to affect the damages in particular cases, where their amount depends on the character and conduct of any in-

dividual (30 N. Y. 285; 8 Iowa, 29; 4 Cush. [Mass.] 217); and, third, to impeach or confirm the veracity of a witness (16 Ohio St. 218; 7 N. Y. 378).

Strict Meaning.

Strictly speaking, "character" is what a person is. U. S. v. Hrasky, 240 Ill. 563.

"Reputation" Compared.

Character consists of the qualities which constitute the individual; reputation is the sum of opinions entertained concerning him. The former is interior; the latter external. The one is the substance; the other the shadow. U. S. v. Hrasky, 240 Ill. 564.

The word "character," used in section 4 of the act of Congress of 1906 relating to naturalization (34 Stat. 596), is not synonymous with "reputation," but refers to what the applicant for naturalization really is. U. S. v. Hrasky, 240 Ill. 564.

CHARGE.

Section 2 of the Frauds and Perjuries Act (J. & A. ¶5868), prohibiting the bringing of an action to "charge any person upon any contract," etc., does not require, in order to make the statute available as a defense, that the action be brought upon a contract, it being sufficient that the effect of the action is to charge the party against whom the action is brought, by means of the contract. Chicago, etc., Co. v. Davis, etc., Co., 142 Ill. 180.

CHARGE AND DISCHARGE.

In equity practice. The mode or form of accounting before a master. Where a decree or order of the court directs an account to be taken and examined before a master, in such case the plaintiff delivers in an account before the master, in the form of a charge (q. v.) against the defendant, which, being examined and gone through, the defendant or adverse party must bring in his discharge (q. v.) against such charge, which being likewise examined and gone through, the master will exercise his judgment upon

the evidence, and allow or disallow the charge, or any part of it, as he thinks proper; and so, e contra, as to the discharge, after which the report is made. Cunningham; Whishaw; 2 Daniell, Ch. Pr. 1420-1422; Hoffman, Master in Chancery, 36-39.

CHARGE DES AFFAIRES, OR CHARGE D'AFFAIRES.

In international law. The title of a diplomatic representative or minister of an inferior grade, to whose care are confided the affairs of his nation.

He has not the title of minister and is generally introduced and admitted through a verbal presentation of the minister at his departure, or through letters of credence addressed to the minister of state of the court to which he is sent. He has the essential rights of a minister. 1 Kent, Comm. 39, note; 4 Dall. (Pa.) 321; 2 Story, U. S. Laws, 1171.

CHARGE GIVEN TO THE JURY.

A charge is given to the jury when the instruction of the court is read or spoken to the jury; and this is true whether the instruction is peremptory or otherwise. Daube v. Kuppenheimer, 195 Ill. App. 104.

CHARGE TO ENTER HEIR.

In Scotch law. A writ commanding a person to enter heir to his predecessor within forty days; otherwise, an action to be raised against him as if he had entered.

The heir might appear and renounce the succession, whereupon a decree cognitionis causa passed, ascertaining the creditor's debt. If the heir did not appear, he then became personally liable to the creditor. A charge was either general, or special, or general special. Charges are now abolished, by 10 & 11 Vict. c. 48, § 16, and a summons of constitution against the unentered heir substituted.

CHARGING ORDER.

By 1 & 2 Vict. c. 110, §§ 14-16, and 3 & 4 Vict. c. 82, when judgment has been recovered in an action, a judge at chambers may make an order that any government stock, funds, or annuities, or any stock or shares in a public company in England, standing in the name of the judgment debtor in his own right, or in the name of any person as trustee for him, shall stand charged with the payment of the judgment debt. Smith, Actions, 211; Rules of Court, xlvi, 1. The effect is to prevent the transfer of the stock, and to give the judgment creditor all the remedies which he would have been entitled to if the charge had been made in his favor by the judgment debtor. but he cannot enforce it until six months from the date of the order. 1 & 2 Vict. c. 110, § 14; Fish. Mortg. 113 et seq.

CHARITABLE.

Pertaining to or characterized by charity, benevolence or kindness. In re Estate of Graves, 242 Ill. 27.

CHARITABLE GIFT.

A charitable gift cannot be sustained where no beneficiary is named and no person is appointed with power to select the beneficiary. Naming a beneficiary not in existence is the same as if no beneficiary had been named. Before resort can be had to the liberal construction given bequests to charity by the courts, the object of the gift must be certain or someone must be appointed by the will with power to render the object There must be sufficient cercertain. tainty in the will to enable the court, in the exercise of its ordinary chancery powers, to carry out the donor's charitable intent. Volunteers of America v. Peirce, 267 Ill. 413.

CHARITABLE TRUST.

Elements.

It is an essential feature of a charitable trust that the beneficiaries are uncer-

tain—a class of persons described in some general language, often fluctuating, changing in their individual numbers, and partaking of a quasi public character. Hunt v. Fowler, 121 Ill. 275.

What Constitutes.

Any trust charitable in its nature and for the benefit of an indefinite number of persons sufficiently designated to indicate the purpose of the donor, and constituting some portion or class of the public, is a charitable trust. Hoeffer v. Clogan, 171 Ill. 468.

CHARITABLE USE.

Nature.

Such uses as come within the general intent and scope of the statute of Elizabeth. Welch v. Caldwell, 226 Ill. 498.

Gifts to general public uses, which may extend to the rich as well as the poor. Ambl. 651; 2 Sneed (Tenn.) 305.

Gifts to such purposes as are enumerated in Act 43 Eliz. c. 4, or which, by analogy, are deemed within its spirit or intendment. Boyle, Charity, 17.

"Whatever is given for the love of God, or for the love of your neighbor, in the catholic or universal sense, free from the stain or taint of every consideration that is personal, private or selfish," is a gift for charitable uses. 2 How. (U.S.) 127. The essentials are (1) that the gift be for the benefit of an indefinite number of persons (14 Allen [Mass.] 556; 107 U. S. 182); (2) that it be free from contractual obligation in or consideration to the donor (33 Pa. St. 419); (3) that the purpose be humanitarian in the broadest sense, whether it be religious (12 Mass. 537), educational (35 N. H. 445; 34 N. J. Eq. 101), benevolent (91 Mass. 442; 54 Ind. 549), or public (163 Mass. 509; 5 Del. Ch. 51).

Technical Meaning—How Determined.

The meaning of the expression "charitable use," when used as descriptive of those trusts and uses which will be upheld as charitable, must in this state be determined with reference to the statute of Elizabeth, known as the statute of

charitable uses. Taylor v. Keep, 2 Ill. App. 377.

Gift to Poor.

A bequest to the worthy poor of a city or county has been held to be a charitable use. Hunt v. Fowler, 121 Ill. 281; Heuser v. Harris, 42 Ill. 431.

Gift of Library.

A devise of property for a free public library in Chicago has been held to be a charitable use. Crerar v. Williams, 145 Ill. 643.

Gift for Support of Church.

A gift for the support of churches or religion is for a charitable use. French v. Calkins, 252 Ill. 258; Alden v. St. Peter's Parish, 158 Ill. 637; Andrews v. Andrews, 110 Ill. 232.

CHARITY.

The word "charity" in its widest sense, denotes all the good affection which men ought to bear towards each other, and in this sense it embraces all that is usually understood by the word benevolence, philanthropy and good will. its more restricted sense it means merely relief or alms to the poor. In neither of these senses is it employed by the courts when used as descriptive of those uses and trusts which will be upheld as charitable. The words charity and charitable uses, at least in this State, where the statute of 43 Elizabeth, chap. 4, commonly known as the Statute of Charitable Uses, is held to be in force, must be determined with reference to the provisions of that statute. Among the results accomplished by the statute of Elizabeth was the establishment of an enumeration or kind of definition, standard or test, to which all gifts and grants in trust could be brought in order to determine whether they were charitable. Accordingly, since the statute, no bequests are deemed within the authority of chancery and capable of being established and regulated thereby, except bequests for those purposes which the statute enumerates as charitable, or which, by analogy, are deemed to be within its spirit or intendment. Perry on Trusts, ¶¶ 696, 697; 2 Story's Eq. Juris, ¶1155. It is true many purposes not enumerated in the statute have been held to be charitable on the ground that though not within its letter, they are within its spirit, intention and principle. On the other hand, many objects of a general nature, though laudable and beneficent in their character, and of general utility, are held not to be included within the legal definition of charity. Taylor v. Keep, 2 Ill. App. 378.

Whatever is given for the love of God or the love of your neighbor, in the catholic and universal sense—given from these motives and to these ends—free from the stain or taint of every consideration that is personal, private or selfish. Garrison v. Little, 75 Ill. App. 411.

A gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burthens of government, it being immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature. Estate of Graves, 242 Ill. 27; Kemmerer v. Kemmerer, 233 Ill. 334; Hoeffer v. Clogan, 171 Ill. 468; Crerar v. Williams, 145 Ill. 643; Mason v. Bloomington, etc., Ass'n, 143 Ill. App. 46.

CHARIVARI.

A mock serenade of discordant noises made with kettles, tin horns, etc., designed to annoy and insult; a vile or noisy music made with tin horns, bells, kettles, pans, etc., in derision of some person or event; a mock serenade. Gilmore v. Fuller, 198 Ill. 137.

CHARTER.

A grant made by the sovereign, either to the whole people, or to a portion of

them, securing to them the enjoyment of certain rights. 1 Story, Const. § 161; 1 Bl. Comm. 108.

Formerly included all deeds relating to hereditaments, especially deeds of feoffment (Co. Litt. 7a, 9b), but in this sense the term is now obsolete, and is now confined to grants by the government, the principal ones being grants of power to form corporations, either municipal or private.

The charter of a corporation formed under a general corporation law does not consist of the articles of association alone, but of such articles taken in connection with the law under which the organization takes place. People v. Chicago, etc., Co., 130 Ill. 285.

CHARTER HOUSE.

Formerly a convent of Carthusian monks in London; now a college founded and endowed by Thomas Sutton. The governors of the charter house are a corporation aggregate without a head, president, or superior, all the members being of equal authority. 3 Steph. Comm. (7th Ed.) 14, 97.

CHARTER PARTY.

A contract of affreightment, by which the owner of a ship or other vessel lets the whole or a part of her to a merchant or other person for the conveyance of goods, on a particular voyage in consideration of the payment of freight. 3 Kent, Comm. 201.

The term is derived from the fact that the contract which bears this name was formerly written on a card, and afterwards the card was cut into two parts from top to bottom, and one part was delivered to each of the parties, which was produced when required, and by this means counterfeits were prevented; the card so cut being called charta parteta.

CHARTER ROLLS.

(Law Lat. rotuli cartarum.) Rolls preserved among the ancient English records, containing the royal charters from the year 1199 to 1516. They comprise grants of privileges to cities, towns, bodies corporate, and private trading companies; grants of markets, fairs, and free warrants of creations of nobility, of privileges to religious houses, etc. Hubback, Ev. Success. 616, and notes.

CHASE.

A liberty of keeping beasts of chase or royal game, protected even from the owner of the land, with the power of hunting them thereon. Dickey, J., dissenting opinion, Parker v. People, 111 Ill. 615.

The liberty or franchise of hunting one's self and keeping protected against all other persons beasts of the chase within a specified district, without regard to the ownership of the land. 2 Bl. Comm. 414-416.

The district within which such privilege is to be exercised.

A chase is a franchise granted to a subject, and hence is not subject to the forest laws. 2 Bl. Comm. 38. It differs from a park, because it may be another's ground, and is not inclosed. It is said by some to be smaller than a forest, and larger than a park. Termes de la Ley. But this seems to be a customary incident, and not an essential quality.

CHASTE LIFE AND CONVERSA-TION.

In a prosecution for abduction, an instruction that the life and previous character of prosecutrix were presumed to be chaste is not substantially different from the language used in section 1 of division 1 of the Criminal Code (J. & A. ¶ 3434), relating to abduction, "chaste life and conversation,"—the word "conversation," used in the statute, meaning "manner of living; habits of life; conduct." Bradshaw v. People, 153 Ill. 160.

CHASTITY.

That virtue which prevents the unlawful commerce of the sexes. Content without lawful venery is continence; without unlawful is chastity. Webster.

CHATTEL.

(Norman Fr.) Goods of any kind; every species of property, movable or immovable, which is less than a freehold.

In the grand coustumier of Normandy it is described as a mere movable, but is set in opposition to a fief or feud; so that not only goods, but whatever was not a feud or fee, were accounted chattels, and it is in this latter sense that our law adopts it. 2 Bl. Comm. 385.

Real chattels are interests which are annexed to or concern real estate, as, a lease for years of land; and the duration of the lease is immaterial, whether it be for one or a thousand years, provided there be a certainty about it, and a reversion or remainder in some other person. A lease to continue until a certain sum of money can be raised out of the rents is of the same description; and so in fact will be found to be any other interest in real estate whose duration is limited to a time certain beyond which it cannot subsist, and which is, therefore something less than a freehold.

Personal chattels are properly things movable, which may be carried about by the owner, such as animals, household stuff, money, jewels, corn, garments, and everything else that can be put in motion, and transferred from one place to another, and the incorporeal hereditaments that grew out of movables. 2 Kent, Comm. 340; Co. Litt. 48a; 4 Coke, 6; 5 Mass. 419; 1 N. H. 350; Story, Eq. Jur. §§ 1021, 1040.

CHATTEL INTEREST.

An estate less than freehold. Oswald v. Wolf, 126 Ill. 549.

An interest in corporeal hereditaments less than a freehold. 2 Kent, Comm. 342.

There may be a chattel interest in real property, as in case of a lease. Stearns, Real Actions, 115.

CHATTEL MORTGAGE.

A conditional sale, the condition being the payment of a debt, and the conditional title of the mortgagee becoming absolute upon default in payment of the debt. O'Neil v. Patterson, 52 Ill. App. 33.

A chattel mortgage is a form of lien unknown to the common law and is a creature of the statute. The statute being in derogation of the common law it must be strictly construed. If not executed, acknowledged and recorded as provided by statute a chattel mortgage is invalid as to those not parties or privies to it. There is no provision in the statute authorizing the acknowledgment to be made under power of attorney. Kimball Co. v. Polakow, 268 Ill. 348.

CHATTELS.

Derivation.

Blackstone says that the word "chattels" is derived from the Latin word "catalla," which in a secondary sense was applied to all movables in general. Chicago & A. R. Co. v. Thompson, 19 Ill. 584.

Lord Coke says that the word "chattels" is a French word, signifying goods. Chicago & A. R. Co. v. Thompson, 19 Ill. 584.

A word which, as used by the Normans, is set in opposition to a flef or feud, so that not only goods but whatever was not a feud were accounted chattels. Reed v. Johnson, 14 Ill. 258.

What Is Included.

Every movable thing which can be weighed, measured or counted is included under the general term "chattels." Chicago & A. R. Co. v. Thompson, 19 Ill. 584.

"Goods" Compared.

The word "chattels" is a more comprehensive term than "goods," and includes animate as well as inanimate property, such as slaves, horses, cattle, while "goods" does not include such property. Chicago & A. R. Co. v. Thompson, 19 Ill. 584.

Money Included.

Money is included within the meaning of the word "chattel." Davis v. Hincke, 264 Ill. 51; Chicago & A. R. Co. v. Thompson, 19 Ill. 585.

Share of Stock Excluded.

A share of stock is not a chattel. Rice v. Gilbert, 72 Ill. App. 650.

Spirituous Liquors Included.

Spirituous liquors are chattels. Cortland v. Larson, 273 Ill. 611; Sullivan v. Oneida, 61 Ill. 248.

CHATTELS PERSONAL.

The expression "chattels personal" includes animals, household stuff, money, jewels, corn, garments, and everything else that can properly be put in motion, and transferred from place to place. Chicago & A. R. Co. v. Thompson, 19 Ill 585.

CHATTELS REAL.

Defined.

Interests which are annexed to or concern real estate, as, a lease for years of land; and the duration of the lease is immaterial,—whether it be for one or a thousand years,—provided there be a certainty about it, and a reversion or remainder in some other person. Knapp v. Jones, 143 Ill. 384.

Building on Leased Land Included.

A building erected by a lessee upon leased ground is a chattel real, and, under the statutes of this state is, as to the recording of incumbrances upon it, classed as real estate. Knapp v. Jones, 143 Ill. 379; 38 Ill. App. 495.

Leasehold Included.

A leasehold interest in land is a chattel real. People v. Shedd, 241 Ill. 165; Imperial, etc., Co. v. Board of Trade, 238 Ill. 107; First, etc., Bank v. Adam, 138 Ill. 498; Conklin v. Foster, 57 Ill. 108.

Mortgage Included.

A mortgage is a chattel real. Griffin v. Marine Co., 52 Ill. 138; Turpin v. Ogle, 4 Ill. App. 619.

CHAUFFEUR.

One who operates and propels an automobile. Christy v. Elliott, 216 Ill. 42.

CHEAT.

"Deceitful practices in defrauding or endeavoring to defraud another of his known right, by some willful device, contrary to the plain rules of common honesty." Hawk. P. C. bk. 2, c. 23, § 1. "The fraudulent obtaining the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public." It did not include mere false pretenses. East, 818.

In order to constitute a cheat or indictable fraud, there must be a use of false tokens, false weights, or such other devices, or a prejudice received, and such injury must affect the public welfare, or have a tendency so to do. 2 East, P. C. 817; 1 Gabbett, Crim. Law, 199; 1 Deac. Crim. Law, 225.

CHEATERS, OR ESCHEATORS.

Officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a "cheater" came to signify a fraudulent person, and thence the verb to "cheat" was derived. Rapalje & L.

CHECK.

A "check," within the meaning of the Negotiable Instruments Act of 1907, is a bill of exchange drawn on a bank payable on demand. Negotiable Instruments Act of 1907, § 184 (J. & A. ¶ 7824); Sublette, etc., Bank v. Fitzgerald, 168 Ill. App. 243.

A draft or order upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the payment, at all events, of a certain sum of money to a person or his order, or to bearer, and payable instantly on demand; a brief draft or order upon a bank or banking house, directing it to pay a certain sum of money. Industrial Bank v. Bowes, 165 Ill. 74; Ridgely v. Patton, 109 Ill. 484.

A draft or order upon a bank or bankhouse, purporting to be drawn upon a deposit of funds, for the payment, at all events, of a certain sum of money to a certain person therein named; or to him or his order, or to bearer, and payable instantly on demand. Martin v. Martin, 202 Ill. 385.

CHECK ROWERS.

An attachment to a machine for planting corn. Joliet, etc., Co. v. Dice, 105 Ill. 650.

CHEVAGE.

A sum of money paid by villeins to their lords in acknowledgment of their villeinage. It was paid to the lord in token of his being chief or head. It was exacted for permission to marry, and also for permission to remain without the dominion of the lord. When paid to the king, it was called "subjection." Termes de la Ley; Co. Litt. 140a; Spelman.

CHICAGO.

Includes Every Part of Chicago.

The term "Chicago," simply, includes every part of Chicago. Chicago & N. W. Ry. Co. v. Mechanics Institute, 239 Ill. 203; Ligare v. Chicago, M. & N. R. Co., 166 Ill. 259; Chicago & N. W. Ry. Co. v. Chicago & E. I. R. Co, 112 Ill. 599.

West Chicago Included.

The town of West Chicago is a part of the city of Chicago. Pettibone v. West Chicago, etc., Commissioners, 215 Ill. 333.

CHICAGO, COOK COUNTY, ILLINOIS.

Divorce-Venue.

A bill for divorce brought in Cook County commencing "your orator, of the city of Chicago, Cook County, Illinois," followed by an allegation that complainant was an actual resident of this state, is a substantial compliance with the requirements of the statute that proceedings for a divorce shall be had in the county where the complainant resides. Way v. Way, 64 Ill. 407.

CHICAGO LEGAL NEWS.

A journal of legal intelligence, containing decisions of Federal and state supreme courts, legal information and general news. Kerr v. Hitt, 75 Ill. 54.

CHICAGO POLICLINIC.

A corporation organized under the laws of the state of Illinois for the purpose of establishing and maintaining a hospital and dispensary, a school of medicine and surgery and a training school for nurses in the city of Chicago and of erecting the necessary buildings therefor. Board of Review v. Chicago Policlinic, 233 Ill. 268.

CHILD.

Defined.

The immediate progeny of human parents; offispring born to such parents. Ryan v. Foreman, 262 Ill. 183; Flannigan v. Howard, 200 Ill. 401.

The word "child," in its popular signification, means a son or daughter; a descendant in the first degree (Webster's Int. Dict.); and the legal meaning of the word is the same as the popular one and does not include a grandchild. The word "children" is never extended to include grandchildren, in the absence of something in the instrument in which the word is employed showing the intention to use it with such an extended meaning or where it is necessary to render the instrument effective. Arnold v. Alden, 173 Ill. 239; Martin v. Modern Woodmen, 253 Ill. 402.

There are two meanings which can be given to the word "child;" one an off-spring or descendant, when a person is spoken of in relation to his parents; another, a person of immature years. Bartholow v. Davies, 276 Ill. 505.

The son or daughter, in relation to the father or mother; the correlative of "parent." A young person of either sex. The age limit of childhood is undefined. 5 Har. & J. (Md.) 392.

It is not synonymous with "minor." 7 Tex. App. 298. And in a classification of females subject of rape, "child" has been held to mean one not arrived at puberty. 22 Ohio St. 102.

Ordinary Meaning.

The ordinary meaning of the word "child" is one under the age of puberty. London, etc., Co. v. Morris, 156 Ill. App. 537.

Referring to Legitimate Child.

The word "child" prima facie means legitimate child. Orthwein v. Thomas, 127 Ill. 562.

Adopted.

The word "child," used in section 10 of the Descent Act (J. & A. ¶ 4211), relating to the rights of children born after the making of a will, includes a child adopted after a will is made. Ryan v. Foreman, 262 Ill. 184; Flannigan v. Howard, 200 Ill. 400.

A deed creating a remainder to the "child" or children of a life tenant does not include an adopted son of such life tenant. Butterfield v. Sawyer, 187 Ill. 601.

Insurance.

A policy of employers' liability insurance excepting from the risks insured against that of loss for injury to any "child" employed by the assured contrary to law does not include a boy 15 years 4 months and 20 days of age. London, etc., Co. v. Morris, 156 Ill. App. 537.

CHILD OR CHILDREN.

The expression "child or children," used in section 3 of the act of 1887 (J. & A. ¶1864), known as the Police Pension Fund Act, relating to payments to dependents of pensioners, includes an adopted child. Ryan v. Foreman, 262 Ill. 190.

CHILDREN.

Popular Meaning.

According to the popular meaning of the word "children," it denotes the immediate offspring. Hanes v. Central, etc., Co., 262 Ill. 89; Arnold v. Alden, 173 Ill. 239.

Legitimate offspring. L. R. 7 H. L. 568; 23 Hun (N. Y.) 260; 14 N. J. Eq. 159. But see 42 Conn. 491. It includes only the first generation, and does not embrace grandchildren (21 N. J. Eq. 84; 19 Ohio St. 30; 104 Mass. 193), but it has been given that meaning in instruments where the context or the necessity of effectuating the instrument required it (15 N. J. Eq. 174; 37 N. Y. 42; 88 Pa. St. 478). It does not include stepchildren (8 Paige [N. Y.] 375), nor adopted children (54 Pa. St. 304. But see 115 Mass. 262.)

Includes All Children of Grantee.

A conveyance to the use of a woman and her "children," plainly means to her and all of her children, the right vesting in each child, successively, as born. Dean v. Long, 122 Ill. 459.

Bastards Excluded.

In the eyes of the law, bastards are not regarded as children for civil purposes. Stoltz v. Doering, 112 Ill. 238.

The word "children," as used in section 1 of the Descents Act (J. & A. ¶ 4202), does not include illegitimate children. Blacklaws v. Milne, 82 Ill. 507.

As Heirs.

The term may mean heirs. Andrews v. Applegate, 223 Ill. 538.

The word "children," used in a will, does not ordinarily mean "heirs," so as to bring the devise under the operation of the rule in Shelley's Case, unless the context of the will leaves no doubt of such intention. Hanes v. Central, etc., Co., 262 Ill. 89; Connor v. Gardner, 230 Ill. 270; Dick v. Ricker, 222 Ill. 417; Strawbridge v. Strawbridge, 220 Ill. 63; Schaefer v. Schaefer, 141 Ill. 342; Leiter v Sheppard, 85 Ill. 247. See also Andrews v. Applegate, 223 Ill. 538, where it is said that the word "children" may mean "heirs" when it appears to have been used with that intent.

CHILDREN, HEIRS AND ASSIGNS.

A will devising property to a woman and her "children, heirs and assigns" is to be construed as referring to their heirs and assigns of the devisee, and not to those of the children, the words "children" and "heirs" being used synonymously. Leiter v. Sheppard, 85 Ill. 247.

Grandchildren.

The word "children" is never extended to include grandchildren in the absence of something in the instrument showing the intention to use it with such extended meaning, or where such extension of meaning is necessary to render the instrument effective. Hanes v. Central Illinois Utilities Co., 262 Ill. 89; Martin v. Modern Woodmen, 253 Ill. 402; Arnold v. Alden, 173 Ill. 239.

As Word of Purchase.

The term "children," in its natural sense, is a word of purchase, and will be taken to have been so used unless so controlled and limited by other expressions in the instrument as to show that it was intended as a word of limitation. Hanes v. Central, etc., Co., 262 Ill. 89; Dick v. Ricker, 222 Ill. 417; Strawbridge v. Strawbridge, 220 Ill. 63; Chapin v. Crow, 147 Ill. 225; Schaefer v. Schaefer, 141 Ill. 341; Butler v. Huestis, 68 Ill. 598.

CHILD'S PART.

Contract.

A contract to give a person a "child's part" in the estate of the contractor is void for uncertainty, since the share which a child is entitled to receive in the estate of a parent depends on a variety of circumstances, and may be nothing. or more or less, depending on such circumstances, so that it is impossible to determine what part of the estate the parties intended to pass under the contract. Woods v. Evans, 113 Ill. 194.

CHILTERN HUNDREDS.

A range of hills in England, formerly much infested by robbers.

To exterminate the robbers, a steward of the chiltern hundreds was appointed. The office long since became a sinecure, and is now used to enable a member of parliament to resign, which he can do only by the acceptance of some office within the gift of the chancellor. 2 Steph. Comm. 403; Wharton.

CHIROGRAPH.

In Old Conveyancing.

A deed or public instrument in writing. Chirographs were anciently attested by the subscription and crosses of witnesses. Afterwards to prevent frauds and concealments, deeds of mutual covenant were made in a script and rescript, or in a part and counterpart, and in the middle, between the two copies, they drew the capital letters of the alphabet, and then tallied, or cut asunder in an indented manner, the sheet or skin of parchment, one of which parts, being delivered to each of the parties, were proved authentic by matching with and answering to one another. Deeds thus made were dominated "syngrapha" by the canonists, because that word, instead of the letters of the alphabet or the word "chirographum," was used. 2 Bl. Comm. 296.

The last part of a fine of land.

It is called, more commonly, the foot of the fine. It is an instrument of writing, beginning with these words: "This is the final agreement," etc. It concludes the whole matter, reciting the parties, day, year, and place, and before whom the fine was acknowledged and levied. Cruise, Dig. tit. 35, c. 2, § 52.

In Civil and Canon Law.

An instrument written out and subscribed by the hands of the king or prince. An instrument written out by the parties, and signed by them. Du Cange; Cowell.

In Scotch Law.

A written voucher for a debt. Bell, Dict. The possession of this instrument by the debtor raises a presumption of payment by him. Bell, Dict.; Ersk. Inst. lib. 2, tit. 4, § 5.

CHOREA.

St. Vitus dance; a diseased physical condition resulting from mental suffering, superinduced by excitement and fright, unattended by injury to the person resulting from impact. Braun v. Craven, 175 Ill. 406.

CHOOSE.

To take one thing rather than another. Cook v. South Park Commissioners, 61 Ill. 119.

CHOSE IN ACTION.

Defined.

A species of intangible property. Scripps v. Board of Review, 183 Ill. 281.

A personal right or thing not reduced to possession, but recoverable in an action, and which cannot be enforced against a reluctant party without suit. Crawford v. Schmitz, 139 III. 569.

A right to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with a contract, but which cannot be enforced without action. Burgess v. Capes, 32 Ill. App. 374.

Including Evidences of Indebtedness.

Evidences of indebtedness, under whatever name they may be termed, whether note, bond, bill of exchange or other instrument, and however secured, is a mere chattel personal and is included under the term "chose in action." Easton v. Board of Review, 183 Ill. 257.

Bank Bills Included.

Bank bills are choses in action. Davis v. Hincke, 264 Ill. 51; Chicago & A. R. Co. v. Thompson, 19 Ill. 585.

Share of Stock Excluded.

A share of stock is not a chose in action. Rice v. Gilbert, 72 Ill. App. 650.

Insurance Policy Excluded.

An insurance policy payable to the estate or personal representatives of the assured is in the nature of a chose in

action. Collins v. Metropolitan, etc., Co., 232 Ill. 44.

Rent Arrear Included.

Rent arrear is a chose in action. Scully v. People, 104 Ill. 352.

Bill of Lading Included.

A bill of lading is a chose in action. Knight v. St. Louis, I. M. & S. R. Co., 40 Ill. App. 473.

Judgment Included.

A judgment is a chose in action. Hinckley v. Champaign Nat. Bank, 216 Ill. 564; Hughes v. Trahern, 64 Ill. 53; McJilton v. Love, 13 Ill. 496.

CHURCH.

A building set apart for Christian worship. People v. Watseka, etc., Ass'n, 160 Ill. 579.

CHURCH DISCIPLINE ACT.

St. 3 & 4 Vict. c. 86, containing regulations for trying clerks in holy orders charged with offenses against ecclesiastical law, and for enforcing sentences pronounced in such cases. Phillim. Ecc. Law, 1314.

CHURCH PROPERTY.

The expression "church property," used in section 2 of the Revenue Act of 1874, exempting certain property from taxation, means the church and a lot of reasonable size for its location. People v. Watseka, etc., Ass'n, 160 Ill. 578.

The expression "church property," used in section 2 of the Revenue Act of 1874, exempting certain property from taxation, does not include ground used for camp meetings although owned by a corporation not organized for pecuniary profits. People v. Watseka, etc., Ass'n, 160 Ill. 579.

CHURCHESSET, CHURCHSET, CIR-SET, KIRKSET, OR CHIRSET.

In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day, and which, according to Fleta, was paid as well in the time of the Britons as of the English. Fleta, lib. 1, c. 47, § 28. An annual tribute paid to the church in grain or other product, census vel tributum ecclesiae, frumenti tributum. Spelman, voc. "Cirset;" Lindenbrog; Domesday Book. Sometimes written chirchsed, and translated "churchseed," semen ecclesiae. Fleta, ubi supra; Co. Litt. 88b. But the proper spelling, according to Spelman, is ciricset, or cirisceat.

CINDER CLODS.

A substance composed of dross and slag, which forms in the process of melting iron and steel. Helmbacher, etc., Co. v. Garrett, 119 Ill. App. 167.

CINDER SIDEWALK.

A curb is a necessary part of a cinder sidewalk where the surface of the cinders is to be above the surface of the earth alongside the walk. Chicago v. Bassett, 238 Ill. 413.

CINQUE PORTS.

The five ports of England which lie towards France.

These ports, on account of their importance as defenses to the kingdom, early had certain privileges granted them, and ir recompense were bound to furnish a certain number of ships and men to serve on the king's summons once in each year. "The service that the barons of the Cinque Ports acknowledge to owe, upon the king's summons, if it shall happen, to attend with their ships fifteen days at their own cost and charges, and so long as the king pleases, at his own charge." Cowell, "Quinque Portus." The Cinque Ports are Dover, Sandwich, Hastings, Hithe, and Romney. Winchelsea and Rye are reckoned ports of Sandwich; and the other of the Cinque Ports have ports appended to them in like manner. The Cinque Ports have a lord warden, who had a peculiar jurisdiction, sending out writs in his own name, and who is also

constable of Dover Castle. The jurisdiction was abolished by 18 & 19 Vict. c. 48; 20 & 21 Vict. c. 1. The representatives in parliament and the inhabitants of the Cinque Ports are each termed "barons." Brande; Cowell; Termes de la Ley.

CIRCUIT.

The word "circuit," used in section 11 of article 5 of the Constitution of 1848, providing that no person shall be eligible to the office of judge of any court unless, inter alia, he shall have resided for two years next preceding his election, in the "division, circuit or county" for which he is elected, is only applicable to circuit judges. People v. Wilson, 15 Ill. 390.

CIRCUITY OF ACTION.

Indirectly obtaining, by means of a subsequent action, a result which may be reached in an action already pending. This is particularly obnoxious to the law, as tending to multiply suits. 1 Term R. 441; 4 Cow. (N. Y.) 682.

CIRCUMSTANTIAL EVIDENCE.

The proof of certain facts and circumstances in a given case from which the jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind. Devine v. Delano, 272 Ill. 179.

Circumstantial evidence is of two kinds, namely: certain, or that from which the conclusion in question necessarily follows; and uncertain, or that from which the conclusion does not necessarily follow, but is probable only, and is obtained by process of reasoning. Gannon v. People, 127 Ill. 520.

CIRCUMSTANTIAL OR PRESUMP-TIVE PROOF.

That measure and degree of circumstantial evidence which is sufficient to produce conviction in the minds of the jury of the truth of the fact in question. Hanchett v. Goets, 25. Ill. App. 454.

CITIES, TOWNS AND VILLAGES.

The expression "cities, towns and villages," used in section 11 of the Act of 1887 relating to state banks (J. & A. ¶ 683), refers solely to incorporated cities, towns and villages. People v. Brady, 273 Ill. 180.

CITIZEN.

Defined.

One of the genus homo, inhabiting, and having certain rights in some state or district. Ducat v. Chicago, 48 Ill. 179.

In English Law.

An inhabitant of a city. 1 Rolle, Abr. 138. The representative of a city, in parliament. 1 Bl. Comm. 174.

Popular Sense.

"A citizen, in the popular and appropriate sense of the term, is one who by birth, naturalization or otherwise is a member of an independent political society called a state, kingdom or empire, and as such is subject to its laws and entitled to its protection in all his rights incident to that relation. Dorsey v. Brigham, 177 Ill. 258; Blanck v. Pausch, 113 Ill. 64.

In American Law.

One who, under the constitution and laws of the United States, has a right to vote for public officers, and who is qualified to fill offices in the gift of the people. One of the sovereign people; a constituent member of the sovereignty, synonymous with the people. 19 How. (U. S.) 404.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." Const. U. S. Amend. XIV.

Includes Minors and Females.

Minors and females may be citizens. Dorsey v. Brigham, 177 Ill. 258; People v. Oldtown, 88 Ill. 205.

Corporation Excluded.

The word "citizen," as used in clause 2 of article 4 of the Constitution of the

United States, and in section 1 of the fourteenth amendment thereto, does not include a corporation. In re Estate of Speed, 216 Ill. 29.

"Resident" Distinguished.

There is a broad distinction between a "citizen" and a "resident," the two forming distinct classes in the state, and the latter class not enjoying all the privileges which appertain to the former. Darst v. Bates, 51 Ill. 449.

"Legal Voter" Distinguished.

The expressions "citizen" and "legal voter" are not synonymous. Dorsey v. Brigham, 177 Ill. 258; People v. Oldtown, 8 Ill. 205.

Removal of Actions.

Under the act of Congress of 1866, as amended by the act of 1867, providing for the removal, in certain cases, to a Federal court of actions brought in a state court against an alien or "citizen" of another state, a petition for such removal alleging that petitioner is a "resident" of another state is insufficient, as petitioner may be a resident of another state and a citizen of this state at the same time. Darst v. Bates, 51 Ill. 449.

CITIZENS OF THE UNITED STATES.

The expression "citizens of the United States," used in section 1 of the four-teenth amendment to the Constitution of the United States, relating to the abridgement by the several states of the privileges and immunities of such citizens, includes a woman. Ritchie v. People, 155 Ill. 112.

CITIZENSHIP.

As Status.

Citizenship is a condition or status depending for its existence upon the laws of the territory in which the individual is domiciled. Dunham v. Dunham, 57 Ill. App. 496.

Suffrage Excluded.

Suffrage is not a right belonging to citizenship. Dorsey v. Brigham, 177 Ill. 258.

"Residence" Distinguished.

Citizenship and residence are not synonymous terms. Cleveland C., C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 485.

CITY.

Defined.

A body politic and corporate established by law, not only to regulate and administer local affairs, but to assist in the civil government of the country. Snell v. Chicago, 133 Ill. 440.

A town incorporated by that name. Burke v. Monroe County, 77 Ill. 615.

Blackstone's Definition.

A town incorporated. People v. Grover, 258 Ill. 130.

In England.

An incorporated town or borough which is or has been the see of a bishop. Co. Litt. 108; 1 Bl. Comm. 114; Cowell.

A large town incorporated with certain privileges; the inhabitants of a city; the citizens. Worcester.

Although the first definition here given is sanctioned by high authority, it is questionable if it is essential to its character as a city, even in England, that it has been at any time a see; and it certainly retains its character of a city after it has lost its ecclesiastical character (1 Steph. Comm. 115; 1 Bl. Comm. 114), and in the United States it is clearly unnecessary that it should ever have possessed this character. Originally, this word did not signify a town, but a portion of mankind who lived under the same government,what the Romans called civitas, and the Greeks polis; when the word politeia, civitas seu reipublicae status et administratio. Toullier, Dr. Civ. Fr. lib. 1, tit. 1, note 202: Henrion de Pansey, Pouvoir Municipal, pp. 36, 37.

Quasi Municipal Corporations Distinguished.

A city is a municipal corporation properly so called, and is therefore a corporation of an entirely different class, organized for different purposes, and possessing powers and subject to liabilities essentially different from those which obtain in case of counties, townships, school districts and other quasi municipal corporations. Misch v. Russell, 136 Ill. 28.

Includes Individuals, Streets and Structures.

A city is made up of the individuals owning the property within its limits, the lots and blocks composing it, and the structures which adorn them. Wilson v. Board of Trustees, 133 Ill. 493; People v. Chicago, 51 Ill. 32.

As Agency of State.

A city not only bears a property or private relation to the state, but it also bears a political relation thereto, being in its political relation merely an agency of the state. Harder's, etc., Co. v. Chicago, 235 Ill. 78. To the same effect see McLean County v. Bloomington, 106 Ill. 214; Galpin v. Chicago, 159 Ill. App. 154.

"Incorporated Town" Distinguished.

In popular use the difference between a city and an incorporated town is generally understood to consist in size and population. People v. Grover, 258 Ill. 131.

When Incorporated Town Included.

The word "city," used in section 1 of the act of 1872, repealing all laws requiring any "city" to provide for paupers, etc., includes an incorporated town. People v. Grover, 258 Ill. 131; Bruner v. Madison County, 111 Ill. 15; Burke v. Monroe County, 77 Ill. 615.

Relative Term.

No explicit meaning can be given to the word "city," and its meaning is frequently to be determined by the context, and in construi-g statutes, by the entire statute and the purpose for which it was passed. People v. Grover, 258 Ill. 131.

CITY ATTORNEY.

The expression "city attorney," used in section 2 of article 4 of the Cities and Villages Act (J. & A. ¶ 1321), providing for the election of certain city officers, is used in the sense of a licensed attorney or attorney at law, and does not include an agent who should represent and act for the city generally, as its business agent. Baxter v. Venice, 271 Ill. 234; Donaldson v. Dieterich, 247 Ill. 526; Baxter v. Venice, 194 Ill. App. 65.

CITY COUNCIL.

A miniature general assembly whose authorized ordinances have the force of laws passed by the legislature of the state. Wragg v. Penn, 94 Ill. 19.

A tax ordinance is not void because the expression "common council" vas used in it, as descriptive of the body passing the ordinance, instead of "city council," as such body was designated in the charter, especially where at the time the ordinance was adopted no election had been held since the adoption of the charter, and the councilmen elected under the old charter were performing the legislative duties of the city government, the two expressions being in any event nearly the same in meaning. Law v. People, 87 Ill.

CITY COURT.

Defined.

City courts are courts of record in and for cities. Supreme Hive v. Harrington, 227 Ill. 523.

As Part of Judicial Department.

City courts are part of the judicial department or branch of the state government. Galpin v. Chicago, 159 Ill. App. 154.

"Municipal Court" Synonymous.

There is no substantial or material difference between the terms "city court" and "municipal court," both of which are courts of the municipality in which they are established. Franklin v. Westfall,

273 Ill. 404; Israelstam v. U. S., etc., Co., 272 Ill. 164; People v. Olson, 245 Ill. 294; Miller v. People, 230 Ill. 75.

Municipal Court of Chicago.

The expression "city courts," used in section 8 of the Appellate Court Act (J. & A. ¶ 2968), and in section 118 of the Practice Act (J. & A. ¶ 8655), relating to the appellate jurisdiction of the appellate and supreme courts, includes the Municipal Court of Chicago. Israelstam v. U. S., etc., Co., 272 Ill. 164 (reversing 195 Ill. App. 131); People v. Cosmopolitan, etc., Co., 246 Ill. 447; People v. Hibernian, etc., Ass'n, 245 Ill. 524; Hosking v. Southern, etc., Co., 243 Ill. 324.

CITY DATUM.

The established grade of the streets. People v. Hills, 193 Ill. 284.

CITY GOVERNMENT.

When "city government" is referred to, the authorities only of executive and legislative character, and not the courts held in the city, are meant. Galpin v. Chicago, 159 Ill. App. 154.

CITY OFFICER.

An officer who may be voted for only by the electors of the entire city. Franklin v. Westfall, 273 Ill. 404.

A judge of a city court is a city officer. Franklin v. Westfall, 273 Ill. 404. But compare Galpin v. Chicago, 159 Ill. App. 154 where it was held that such judges were not city officials in the same sense as the mayor, city treasurer and other similar officials.

CITY OFFICERS THEN IN OFFICE.

Section 3 of article 1 of the Cities and Villages Act (J. & A. ¶ 1273), providing that in case of an adoption of the act by the people of a city at any election the "city officers then in office" shall "thereupon exercise the powers," etc., refers to the officers elected at the preceding annual election, whose terms will expire as

soon as their successors are qualified under the new act, and who were holding their offices and exercising their functions on the day of the election, and who had qualified as such at the former election. Crook v. People, 106 Ill. 246.

CITY TAX.

A tax which a city is authorized to levy is known and designated as a "city tax," as distinguished from a "road and bridge" tax, required by section 2 of the act of 1901 (J. & A. ¶ 9566) to be excluded in determining whether the aggregate of all taxes certified to be extended exceeds three per cent of the assessed valuation, so as to require a reduction, although such city tax may include an item for streets, alleys and sidewalks. People v. Illinois C. R. Co., 256 Ill. 336.

CIVIL.

Pertaining to a citizen, as civil rights. In contradistinction to "barbarous" or "savage" indicates a state of society reduced to order and regular government. Thus, we speak of civil life, civil society, civil government and civil liberty. In contradistinction to "criminal," to indicate the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government. Thus, we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction. It is also used in contradistinction to "military" or "ecclesiastical," to "natural" or "foreign." Thus, we speak of a civil station, as opposed to a military or an ecclesiastical station; a civil death, as opposed to a natural death; a civil war, as opposed to a foreign war. Story, Const. § 789; 1 Bl. Comm. 6, 125, 251; Montesquieu, Sp. Laws, bk. 1, c. 3; Rutherford, Inst. bk. 2, cc. 2, 3; Rutherford, Inst. bk. 2, c. 8; p. 359; Heinec. E. Elem Jur. Civ. b. 2, c. 6.

CIVIL ACTION.

Defined.

One prosecuted for the establishment or recovery of a right, or the prevention



of a wrong, or the redress of an injury. McPike v. McPike, 10 Ill. App. 334.

Action on Alimony Decree.

An action to recover alimony decreed to plaintiff is a civil action. Paulin v. Paulin, 195 Ill. App. 353.

Action for Penalty.

Where an offense is created by statute and a penalty affixed for its commission, which is to be recovered by an action of debt and not by prosecution, the action is civil and the rules of criminal pleading and procedure do not apply. People v. Gartenstein, 248 Ill. 552.

An action to recover a penalty for the violation of the city ordinance is a civil suit. City of Chicago v. Knobel, 232 Ill. 114; Hoyer v. Mascoutah, 59 Ill. 138; Graubner v. Jacksonville, 50 Ill. 87; Jacksonville v. Block, 36 Ill. 509.

Scire Facias on Recognizance.

A scire facias on a forfeited recognizance is a civil suit for the recovery of money due on a contract. People v. Rubright, 241 Ill. 602; Peacock v. People, 83 Ill. 332.

CIVIL CONTEMPT.

A contempt proceeding put on foot for the purpose of affording relief between parties to a cause in chancery is civil. People v. Diedrich, 141 Ill. 669.

That quasi contempt which consists in failing to do something which the contemner is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court. Holbrook v. Ford, 153 Ill. 647.

A contempt is civil when a person fails or refuses to do something which he has been ordered to do for the benefit of opposite party, and when he is punished therefor either by imprisonment or fine. Powers v. People, 114 Ill. App. 326.

CIVIL GOVERNMENT.

The expression "civil government," in itself, implies an abridgment of natural liberty. Petition of Ferrier, 103 Ill. 372.

CIVIL LAW.

A law on which the laws of continental Europe may be said to be based. Adams v. Akerlund, 168 Ill. 641.

This term is generally used to designate the Roman jurisprudence, jus civile Romanorum. In its most extensive sense, the term "Roman law" comprises all those legal rules and principles which were in force among the Romans, without reference to the time when they were adopted. But in a more restricted sense we understand by it the law compiled under the auspices of the Emperor Justinian, and which are still in force in many of the states of modern Europe, and to which all refer as authority or written reason.

The ancient leges curiatae are said to have been collected in the time of Tarquin, the last of the kings, by a pontifex maximus of the name of Sextus or Publius Papirius. This collection is known under the title of Jus Civile Papirianum; its existing fragments are few, and those of an apocryphal character. Mackeld. Civ. Law, § 21.

After a fierce and uninterrupted struggle between the patricians and plebeians, the latter extorted from the former the celebrated law of the Twelve Tables, in the year 300 of Rome. This law, framed by the decemvirs, and adopted in the comitia centuriata, acquired great authority, and constituted the foundation of all the public and private laws of the Romans, subsequently, until the time of Justinian. It is called Lex Decemviralis. Mackeld. Civ. Law, § 21. From this period, the sources of the jus scriptum consisted in the leges, the plebiscita, the senatusconsulta and the constitutions of the emperors, constitutiones principum: and the jus non scriptum was found partly in the mores majorum, the consuetudo, and the res judicata, or auctoritas rerum perpetua similiter judicatorum. The edicts of the magistrates, or jus honorarium, also formed a part of the unwritten law; but by far the most prolific source of the jus non scriptum consisted in the opinions and writings of the lawyers,-responsa prudentium.

The few fragments of the Twelve Tables that have come down to us are stamped with the harsh features of their aristocratic origin. But the jus honorarium established by the practors and other magistrates, as well as that part of the customary law which was built up by the opinions and writings of the prudentes, are founded essentially on principles of natural justice.

Many collections of the imperial constitutions had been made before the advent of Justinian to the throne. He was the first after Theodosius who ordered a new compilation to be made. For this purpose he appointed a committee of ten lawyers, with very extensive powers. their head was the exquaestor sacri palatii, Johannes, and among them the afterwards well-known Tribonian. instructions were to select, in the most laconic form, all that was still of value in the existing collections, as well as in the later constitutions; to omit all obsolete matter; to introduce such alterations as were required by the times; and to divide the whole into appropriate titles. Within fourteen months, the committee had finished their labors. Justinian confirmed this new code, which consisted of twelve books, by a special ordinance, and prohibited the use of the older collections of rescripts and edicts. This Code of Justinian, which is now called Codex Vetus, has been entirely lost.

After the completion of this code, Justinian ordered Tribonian, in 530, who was now invested with the dignity of quaestor sacri palatii, and sixteen other jurists, to select all the most valuable passages from the writings of the old jurists which were regarded as authoritative, and to arrange them, according to their subjects, under suitable heads. These commissioners also enjoyed very extensive powers. had the privilege, at their discretion, to abbreviate, to add, and to make such other alterations as they might consider adapted to the times; and they were especially ordered to remove all the contradictions of the old jurists, to avoid all repetitions, and to omit all that had become entirely obsolete. The natural consequence of this was that the extracts did

not always truly represent the originals, but were often interpolated and amended in conformity with the existing law. Alterations, modifications, and additions of this kind are now usually called Emblemata Triboniani. This great work is called the "Pandects," or "Digest," and was completed by the commissioners in three years. Within that short space of time, they had extracted from the writings of no less than thirty-nine jurists all that they considered valuable for the purpose of this compilation. It was divided into fifty books, and was entitled Digesta sive Pandectae Juris Enucleati ex Omni Vetere Jure Collecti. The Pandects were published on the 16th December, 533, but they did not go into operation until the 30th of that month. In confirming the Pandects, Justinian prohibited further reference to the old jurists; and. in order to prevent legal science from becoming so diffuse, indefinite, and uncertain as it had previously been, he forbade the writing of commentaries upon the new compilation, and permitted only the making of literal translations into Greek.

In preparing the Pandects, the compilers met very frequently with controversies in the writings of the jurists. Such questions, to the number of thirty-four, had been already determined by Justinian before the commencement of the collection of the Pandects, and before its completion the decisions of this kind were increased to fifty, and were known as the "fifty decisions of Justinian." These decisions were at first collected separately, and afterwards embodied in the new code.

For the purpose of facilitating the study of the law, Justinian ordered Tribonian, with the assistance of Theophilus and Dorotheus, to prepare a brief system of law under the title of "Institutes," which should contain the elements of legal science. This work was founded on, and to a great extent copied from, the commentaries of Gaius, which, after having been lost for many centuries, were discovered by the great historian Niebuhr, in 1816, in a palimpsest, or rewritten manuscript of some of the homilies of St. Jerome, in the Chapter Library of

What had become obsolete in Verona. the commentaries was omitted in the Institutes, and references were made to the new constitutions of Justinian so far as they had been issued at the time. Justinian published his Institutes on the 21st November, 533, and they obtained the force of law at the same time with the Pandects, December 30, 533. Theophilus, one of the editors, delivered lectures on the Institutes in the Greek language, and from these lectures originated the valuable commentaries known under the Latin title. Theophili Antecessoris Paraphrasis Graeca Institutionum Caesarearum. The Institutes consist of four books, each of which contains several titles.

After the publication of the Pandects and the Institutes, Justinian ordered a revision of the Code, which had been promulgated in the year 529. This became necessary on account of the great number of new constitutions which he had issued, and of the fifty decisions not included in the old Code, and by which the law had been altered, amended, or modi-He therefore directed Tribonian, with the assistance of Dorotheus, Menna. Constantinus, and Johannes, to revise the old Code, and to incorporate the new constitutions into it. This revision was completed in the same year; and the new edition of the Code, Codex Repetitae Praelectionis, was confirmed on the 16th November, 534, and the old Code abolished. The Code contains twelve books, subdivided into appropriate titles.

During the interval between the publication of the Codex Repetitae Praelectionis, in 535, to the end of his reign, in 565, Justinian issued, at different times, a great number of new constitutions, by which the law on many subjects was entirely changed. The greater part of these constitutions were written in Greek, in obscure and pompous language, and published under the name of Novellae Constitutiones, which are known to us as the "Novels of Justinian." Soon after his death, a collection of one hundred and sixty-eight Novels was made, one hundred and fifty-four of which had been issued by Justinian, and the others by his successors.

Justinian's collections were, in ancient times, always copied separately, and afterwards they were printed in the same way. When taken together, they were indeed called, at an early period, the Corpus Juris Civilis; but this was not introduced as the regular title comprehending the whole body. Each volume had its own title until Dionysius Gothofredus gave this general title in the second edition of his glossed Corpus Juris Civilis, in 1604. Since that time this title has been used in all the editions of Justinian's collections.

It is generally believed that the laws of Justinian were entirely lost and forgotten in the Western Empire from the middle of the eighth century until the alleged discovery of a copy of the Pandects at the storming and pillage of Amalfi, in 1135. This is one of those popular errors which had been handed down from generation to generation without question or inquiry, but which has now been completely exploded by the learned discussion, supported by conclusive evidence. of Savigny, in his History of the Roman Law during the Middle Ages. Indeed. several years before the sack of Amalfi, the celebrated Irnerius delivered lectures on the Pandects in the University of Bologna. The pretended discovery of a copy of the Digest at Amalfi, and its being given to Lothaire II. to his allies, the Pisans, as a reward for their services, is an absurd fable. No doubt, during the five or six centuries when the human intellect was in a complete state of torpor, the study of the Roman law, like that of every other branch of knowledge, was neglected; but on the first dawn of the revival of learning, the science of Roman jurisprudence was one of the first to attract the attention of mankind; and it was taught with such brilliant success as to mmortalize the name of Irnerius, its great professor.

Even at the present time the Roman law exercises dominion in every state in Europe except England. The countrymen of Lycurgus and Solon are governed by it, and in the vast empire of Russia it furnishes the rule of civil conduct. In America, it is the foundation of the law

of Louisiana, Canada, Mexico, and all republics of South America. Its influence in the formation of the common law of England cannot be denied by the impartial inquirer. It was publicly taught in England, by Roger Vacarius, as early as 1149; and all admit that the whole equity jurisprudence prevailing in England and the United States is mainly based on the civil law.

CIVIL LIBERTY.

"Civil liberty, which is that of a member of society, is no other than natural liberty, so far restrained by human laws, and no farther, as is necessary and expedient for the general welfare." Lindsay v. Lindsay, 257 Ill. 335; Petition of Ferrier, 103 Ill. 372.

The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. 1 Bl. Comm. 125; 2 Steph. Comm. 487. The power of doing whatever the laws permit. 1 Bl. Comm. 6; Inst. 1. 3. 1.

Blackstone's definition is substantially that of the civilians; that of Justinian being: "The natural power of doing whatever one pleases, except what is prohibited by force or law." Inst. 1. 3. 1. This is adopted by Bracton almost in terms. Bracton, fol. 46b. Blackstone's amendment, as will be seen, consists in the elimination of the idea of restraint by force.

CIVIL OFFICE.

Civil offices are divided into political, judicial and ministerial. People v. Koerner, 21 Ill. 68.

CIVIL OFFICER.

Any officer of the United States who holds his appointment under the national government, whether his duties are executive or judicial, in the highest or lowest departments of the government, with the exception of officers of the army and navy. Rawle, Const. 213; 2 Story, Const. § 790.

The term occurs in the constitution of the United States (article 2, § 4) which provides that the president, vice president, and civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. It has been decided that a senator of the United States is not a civil officer, within the meaning of this clause in the constitution. Senate Journal, 10th Jan. 1799; 4 Tucker, Bl. Comm. Append. 57, 58; Rawle, Const. 213; Serg. Const. Law, 376; Story, Const. § 791.

CIVIL PROCEEDING.

Bastardy Proceeding.

A prosecution under the Bastardy Act (J. & A. ¶¶ 703 et seq.) is a civil proceeding, though in form criminal, being essentially of the nature of a civil action, the object being, not the imposition of a penalty for an immoral act, but merely to compel the putative father to contribute to the support of his illegitimate child. Scharf v. People, 134 Ill. 243; Rawlings v. People, 102 Ill. 478; McCoy v. People, 71 Ill. 114; People v. Starr, 50 Ill. 53; Allison v. People, 45 Ill. 38; People v. Noxon, 40 Ill. 30; Maloney v. People, 38 Ill. 62; Pease v. Hubbard, 37 Ill. 259; Mann v. People, 35 Ill. 467.

Chancery Proceeding.

The expression "civil proceedings," used in section 79 of the Practice Act (J. & A. ¶8616), relating to special verdicts, includes suits in chancery where the statute provides that the issues made may be tried by a jury, such as a bill to contest a will, for divorce, etc., in which verdicts rendered have the force and effect of a verdict in an action at law, but does not include suits in equity where an issue of fact is made and submitted to a jury for a verdict which when rendered is only advisory to the court, and by which he may or may not be controlled, as his sound judicial discretion may determine. Bird v. Bird, 218 Ill. 163.

CIVIL RIGHTS.

A right accorded to every member of a district community or nation; those which

have no relation to the establishment, support or management of the government, consisting in the power of acquiring and enjoying property, or exercising the paternal and marital powers, and the like. People v. Barrett, 203 Ill. 104; Fletcher v. Tuttle, 151 Ill. 53.

Liberty of person and conscience, right to acquire and hold and transfer property, to sue and defend, security in person, estate and reputation. Dorsey v. Brigham, 177 Ill. 258.

CIVIL SUITS.

See Civil Action.

CIVILIS.

(Lat. from civis, a citizen.) Civil, as distinguished from criminal. Civilis actio, a civil action. Bracton, fols. 101b, 102. Civilis causa, a civil cause. Bracton, fols. 101b, 102. Placita civilia, civil pleas. Flet, lib. 2 c. 1, § 25. Injuriae civiles, civil injuries. Fleta, lib. 2, c. 1, § 5.

Civil belonging to a civitas or state; jus civile, civil law, the particular law of a state, as distinguished from jus gentium, the common law of nations. Inst. 1. 2. 1. 2.

CLAIM.

"Indebtedness" Distinguished.

The word "claim" generally has a different meaning than the word "indebtedness." Mallers v. Crane Co., 191 Ill. 185.

Bond.

Where a bond was given to secure an indebtedness and was conditioned that certain "claims" therein referred to as assigned to the obligee were not less than an amount named, it is not error to hold a proposition of law that by the word "claims" the parties meant valid claims for actual indebtedness, and not mere claims that such indebtedness existed, any other construction making the transaction an idle ceremony. Mallers v. Crane Co., 191 Ill. 185.

Prima Facie Title.

The expression "claim and color of title made in good faith," used in section 6 of the Limitations Act (J. & A. ¶ 7201), means such a title as, tested by itself, would appear to be good—not a paramount title, capable of resisting all others, but such an one as would authorize the recovery of the land when attacked when no better title is shown; that is, a prima facie title. Peabody v. Burri, 255 Ill. 597; Converse v. Calumet R. Ry. Co., 195 Ill. 208; Dickenson v. Breeden, 30 Ill. 325; Rawlings v. Bailey, 15 Ill. 180; Irving v. Brownell, 11 Ill. 412.

Decree in Partition Suit.

A decree in a partition suit vesting title in a claimant followed by possession and payment of taxes is "claim and color of title made in good faith," within the meaning of section 6 of the Limitations Act (J. & A. \P 7201). Peters v. Dicus, 254 Ill. 382.

Deed Purporting to Convey.

The expression "claim and color of title made in good faith," used in section 6 of the Limitations Act (J. & A. ¶7201), refers to any deed or instrument in writing which purports on its face to convey title, which a party is willing to, and does, pay his money for, apart from any fraud, and pays all the taxes assessed upon the land so conveyed. Hardin v. Gouveneur, 69 Ill. 143; Dickenson v. Breeden, 30 Ill. 326. To the same effect see Peabody v. Burri, 255 Ill. 597; Carpenter v. Fletcher, 239 Ill. 448; Taylor v. Hamilton, 173 Ill. 395; Walker v. Converse, 148 Ill. 629; Sontag v. Bigelow, 142 Ill. 152; Perry v. Burton, 111 Ill. 141; Rigor v. Frye, 62 Ill. 509; Hinkley v. Greene, 52 Ill. 227; Morrison v. Norman, 47 Ill. 479; Shackleford v. Bailey, 35 Ill. 392; Holloway v. Clark, 27 Ill. 486; Bride v. Watt, 23 Ill. 459.

Any instrument having a grantor and grantee, containing a description of the lands intended to be conveyed, and apt words for their conveyance, is "claim and color of title made in good faith," within the meaning of section 6 of the Limitations Act (J. & A. ¶7201). Wells v.

Wells, 246 Ill. 472; Lewis v. Pleasants, 143 Ill. 286; Brooks v. Bruyn, 35 Ill. 395; McCagg v. Heacock, 34 Ill. 479.

Does Not Import Actual Title.

The expression "claim and color of title, made in good faith," used in section 6 of the Limitations Act (J. & A. ¶7201), does not import actual title, but refers to that which in appearance is title, but in reality is not, or to an instrument purporting to convey real estate, which because of some imperfection does not do so, in other words, to an apparently good, but actually imperfect title. Brian v. Melton, 125 Ill..652; Burgett v. Taliaferro, 118 Ill. 517; Bolden v. Sherman, 110 Ill. 425; Coleman v. Billings, 89 Ill. 190; Payne v. Markle, 89 Ill. 69.

Paper Title.

The expression "claim and color of title made in good faith," used in section 6 of the Limitations Act (J. & A. ¶ 7201), refers to a paper title, not existing, in whole or in part, by parol, and purporting on its face to convey title. Peabody v. Burri, 255 Ill. 597; Converse v. Calumet R. Ry. Co., 195 Ill. 207; Lightcap v. Bradley, 186 Ill. 518; Kruse v. Wilson, 79 Ill. 241.

CLAIM OF RIGHT.

The rule that in order to ripen into an easement by adverse enjoyment the user must be under a "claim of right" does not mean that the claim must be well founded, but only a claim of such right, and the requirements of the rule are satisfied by a user under a contract which is void as being not in conformity with the Statute of Frauds. Schmidt v. Brown, 226 Ill. 599.

CLAIM OR DEMAND.

The expression "claim or demand," used in section 17 of the Practice Act in force in 1840, relating to actions commenced before a justice of the peace, embraces ail cases arising out of contracts or agreements. Nichols v. Ruckells, 4 Ill. 299,

CLAIMANT.

A provision in an accident insurance policy making it the duty of the "claimant" to give the company notice of injury within seven days from its occurrence does not apply to the administratrix of the insured, who did not take out letters until thirty days after the injury, and consequently did not become a "claimant" until that time. Globe, etc., Co. v. Gerisch, 163 Ill. 630.

CLAIMS OF ANY AND EVERY DESCRIPTION.

A deed made subject to existing mortgages, etc., and "claims of any and every description," which are assumed by grantee, does not limit the claims assumed to encumbrances of record. Gage v. Cameron, 212 Ill. 158.

CLAN-NA-GAEL.

An organization composed exclusively of persons of Irish nativity or descent, known as the "United Brotherhood." Coughlin v. People, 144 Ill. 145.

CLEAR.

A contract to "clear" land on which are large trees requires the contractor to clear the land of the trees. Holmes v. Stummel, 15 Ill. 413.

CLEAR CONVICTION.

In an action of tort against a physician for malpractice it is error to instruct a jury that they shall find for plaintiff if the evidence produces a "clear conviction" of the truth of the charge, since such instruction is equivalent to telling them that they must be satisfied of the truth of the charge beyond a reasonable doubt, it being sufficient, in such actions, that the evidence preponderates in favor of plaintiff. Hoener v. Koch, 84 Ill. 410.

CLEAR, GRUB AND PILE.

A contract to "clear, grub and pile" brush on a named tract of land requires

contractor to clear the land of brush, but not of large trees, and to grub the brush in a ravine included in the described tract if contractee insists on it, regardless of evidence of a custom to the contrary. Holmes v. Stummel, 15 Ill. 413.

CLEARANCE CARD.

A letter,—be it good, bad or indifferent,—given to an employee at the time of his discharge or end of service, showing the cause of such discharge or voluntary quittance, the length of time in service, his capacity, and such other facts as would give to those concerned information of his former employment. McDonald v. Illinois C. R. Co., 187 Ill. 536; Cleveland, C. C. & St. L. Ry. Co. v. Jenkins, 174 Ill. 402.

CLERK.

In Commercial Law.

A person in the employ of a merchant, who attends only to a part of his business, while the merchant himself superintends the whole. He differs from a factor in this, that the latter wholly supplies the place of his principal in respect to the property consigned to him. Pardessus, Dr. Com. note 38; 1 Chit. Prac. 80; 2 Bouy. Inst. note 1287.

In Ecclesiastical Law.

Any individual who is attached to the ecclesiastical state, and has submitted to the tonsure. One who has been ordained.

1 Bl. Comm. 388. A clergyman. 4 Bl. Comm. 367.

Stenographer Excluded.

A stenographer does not come within the common law definition of "clerk." People v. Brady, 262 Ill. 595.

Secretary of Corporation.

A delivery by a sheriff of a copy of the execution to the secretary of a corporation is a compliance with section 53 of the Judgments, Decrees and Executions Act (J. & A. ¶ 6800), relating to the levy

of an execution on corporate stock, requiring that such copy be delivered to the "clerk" or other named officer of the corporation, the word "clerk," in such a connection, meaning the officer who usually has the custody of the books and records of the corporation, and the "secretary" of such corporation being only another named for such officer. People v. Goss, etc., Co., 99 Ill. 361.

CLERK OF THE PEACE.

An officer appointed by the custos rotulorum to assist the justices of the peace in quarter sessions in drawing indictments, entering judgments, issuing process, etc. Pritch. Quar. Sess. 49.

CLERK OF THE PRIVY SEAL.

There are four of these officers, who attend the lord privy seal, or, in the absence of the lord privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal, and also to make out "privy seals," as they are termed, upon any special occasion of his majesty's affairs, as for the loan of money, and such like purposes. 27 Hen. VIII. c. 11. Cowell.

CLERKS OF SEATS.

In the principal registry of the probate division of the English high court, clerks of seats discharge the duty of preparing and passing the grants of probate and letters of administration, under the supervision of the registrars. There are six seats the business of which is regulated by an alphabetical arrangement, and each set has four clerks. They have to take bonds from administrators, and to receive caveats against a grant being made in a case where a will is contested. They also draw the "acts," i. e., a short summary of each grant made, containing the name of the deceased, amount of assets and other particulars. Second Rep. Leg. Dep. Comm. 79.

CLOSE.

An interest in the soil (Doctor & Stud. 30; 6 East, 154; 7 East, 207; 1 Burrows, 133), or in trees or growing crops (4 Mass. 266; 9 Johns. [N. Y.] 113).

An inclosed tract of land. 3 Bl. Comm. 209.

In every case where one has a right to exclude another from his land, the law encircles it, if not actually inclosed with an imaginary fence, and entitles him to a compensation in damages for the injury he sustains by the act of another passing through his boundary denominating such land a "close." Hammond, N. P. 151; Doctor & Stud. dial. 1, c. 8, p. 30; 2 Whart. (Pa.) 430.

Common Meaning.

"The term close in its common acceptation, means an inclosed field." Wright v. Bennett, 4 Ill. 259.

Technical Meaning.

The word "close," in law, denotes the interest of the party in the land, whether enclosed or not, signifying an interest which will enable the party to maintain trespass for an injury to real property or to the mere possession. Wright v. Bennett, 4 Ill. 259.

CLOUD ON TITLE.

Defined.

Instruments or other proceedings in writing, which appear upon the records and thereby cast doubt on the validity of the record title. Parker v. Shannon, 121 Ill. 454.

An outstanding claim or encumbrance, which, if valid, would affect or impair the title of the owner, and which appears on its face to have that effect but which can be shown by extrinsic evidence to be invalid. Roby v. South Park Comms., 215 Ill. 203. To the same effect see Petty v. Beers, 224 Ill. 130.

The semblance of a title, either legal or equitable, or a claim of an interest in lands, appearing in some legal form, but which is, in fact, unfounded, or which it would be inequitable to enforce. Dodsworth v. Dodsworth, 254 Ill. 51; Allott | in the Miners' Act in its general sense,

v. American, etc., Co., 237 Ill. 60; Roby v. South Park Commissioners, 215 Ill. 204; Griffiths v. Griffiths, 198 Ill. 637; Shults v. Shults, 159 Ill. 663; Rigdon v. Shirk, 127 Ill. 412; Harts v. Kimball, 149 Ill. App. 529; Kesner v. Miesch, 107 Ill. App. 470.

A title or encumbrance apparently valid but actually invalid. Allott v. American, etc., Co., 237 Ill. 60; Roby v. South Park Commissioners, 215 Ill. 204; Goodkind v. Bartlett, 136 Ill. 21; Eagleston v. Goodykoontz, 182 Ill. App. 319.

A semblance of a title, either legal or equitable, which, if valid, would affect or impair the title but which can be shown by extrinsic evidence to be invalid. Glos v. People, 259 Ill. 342; Roby v. South Park Commissioners, 215 Ill. 204; Reed v. Tyler, 56 Ill. 291.

Mere Assertion of Ownership.

A mere verbal claim or oral assertion of ownership in property, is not a cloud upon the title. Parker v. Shannon, 121 III. 454.

Title Invalid on Its Face.

Where title is invalid on its face, so that it can never be successfully maintained, it does not amount to a cloud. Glos v. People, 259 Ill. 343; Roby v. South Park Commissioners, 215 Ill. 204; Shults v. Shults, 159 Ill. 663; Gage v. Starkweather, 103 Ill. 561.

CLUB.

An assemblage of individuals for a common purpose. Cortland v. Larson, 273 III. 610.

The term "club" imports a deadly weapon. Schwarz v. Poehlmann, 178 Ill. App. 238; McNary v. People, 32 Ill. App. 62.

CLUBROOMS.

The rooms or quarters used by a club. Cortland v. Larson, 273 Ill. 610.

COAL MINE.

The expression "coal mine," as used



is intended to signify any and all parts of the property of a mining plant, on the surface or underground, which contributes, directly or indirectly, under one management, to the mining or handling of coal. Miners Act §30 (J. & A. ¶7504); Miners Act of 1899 § 34; Hakanson v. La Salle, etc., Co., 265 Ill. 167; Moore v. Dering, etc., Co., 242 Ill. 87; Spring Valley, etc., Co., v. Greig, 226 Ill. 516; Pruett v. O'Gara, etc., Co., 165 Ill. App. 480; Moore v. Dering, etc., Co., 147 Ill. App. 97.

COAL SHAFT.

A mining lease covenanting that a certain "coal shaft" mentioned therein shall never be connected underground with any other mines is not broken where the "coal mine" which was leased is connected with other mines, while the shaft is not so connected, and the coal taken from the leased mine was hoisted from shafts on such other mines, the "coal shaft" and "coal mine," as so used, being not synonymous. Pruett v. O'Gara, etc., Co., 165 Ill. App. 480.

COAST.

The margin of a country bounded by the sea. This term includes the natural appendages of the territory which rise out of the water, although they are not of sufficient firmness to be inhabited or fortified. Shoals perpetually covered with water are not, however, comprehended under the name of "coast." 5 C. Rob. Adm. 385c.

COASTING TRADE.

Domestic trade between port and port in the United States, as distinguished from foreign trade between a port in the United States and a port in a foreign country. 1 Wend. (N. Y.) 557; 10 Cal. 504. It is said to include trade between places in the same district on a navigable river (3 Cow. [N. Y.] 713), but not to the mere crossing of a river (1 Newb. 24).

COCKET.

A seal appertaining to the king's custom house. Reg. Orig. 192.

A scroll or parchment sealed and delivered by the officers of the custom house to merchants, as an evidence that their wares are customed. Cowell; Spelman. See 7 Low. (U. S.) 116.

The entry list in the custom house itself.

CODE.

A body of law established by the legislative authority of the state, and designed to regulate completely, so far as a statute may, the subjects to which it relates.

Austrian.

The Civil Code was promulgated in 1811,—the code of Joseph II. (1780) having been found wholly unsuited to the purpose and by his successor abrogated. It is founded in a great degree upon the Prussian. The Penal Code (1852) is said to adopt to some extent the characteristics of the French Penal Code.

Bergundian.

Lex Romana, otherwise known in modern times as the Papiniani Responsorum. Promulgated A. D. 517.

It was founded on the Roman law, and its chief interest is the indication which, in common with the other Barbaric codes, it affords of the modifications of jurisprudence under the changes of society amidst which it arose.

Consolato del Mare.

A code of maritime law of high antiquity and great celebrity.

Its origin is not certainly known. It has been ascribed to the authority of the ancient kings of Arragon; but there is some reason for maintaining the theory that it was gradually collected and handed down as a digest of all the principal rules and usages established among the maritime nations of Europe from the twelfth to the fourteenth century. Since it was first printed at Barcelona in the

fourteenth century, it has been enlarged from time to time by the addition of various commercial regulations. Its doctrines are founded to a large extent on the Greek and Roman law. It seems to have been originally written in the dialect of Catalonia; but it has been translated into every language of Europe, except English. It is referred to at the present day as an authority in respect to the ownership of vessels, the rights and obligations thereto, to the rights and responsibilities of master and seamen, to the law of freight of equipment and supply, of jettison and average, of salvage, of ransom, and of prize. The edition of Pardessus, in his Collection de Lois Maritimes (volume 2), is deemed the best.

French Codes.

The chief French codes of the present day are five in number, sometimes known as Les Cinq Codes. They were in great part the work of Napoleon, and the first in order bears his name. They are all frequently printed in one duodecimo volume. These codes do not embody the whole French law, but minor codes and a number of scattered statutes must also be resorted to upon special subjects.

(1) Code Civil, or Code Napoleon, is composed of thirty-six laws, the first of which was passed in 1803, and the last in 1804, which united them all in one body, under the name of Code Civil des Francais.

The first steps towards its preparation were taken in 1793, but it was not prepared till some years subsequently and was finally thoroughly discussed in all its details by the court of Cassation, of which Napoleon was president, and in the discussions of which he took an active part throughout. In 1807 a new edition was promulgated, the title Code Napoleon being substituted. In the third edition (1816) the old title was restored; but in 1852 it was again displaced by that of Napoleon.

Under Napoleon's reign, it became the law of Holland, of the Confederation of the Rhine, Westphalia, Bavaria, Italy, Naples, Spain, etc. It has undergone great amendment by laws enacted since it was established. It is divided into three books: Book 1, "Of Persons and the Enjoyment and Privation of Civil Rights." Book 2, "Property and Its Different Modifications." Book 3, "Different Ways of Acquiring Property." Prefixed to it is a preliminary title, "Of the Publication, Effects and Application of Laws in General."

(2) Code de Procedure Civil. That part of the code which regulates civil proceedings.

It is divided into two parts: Part 1 consists of five books, the first of which treats of justices of the peace; the second, of inferior tribunals; the third, of royal (or appellate) courts; the fourth, of extraordinary means of proceeding; the fifth, of the execution of judgments. Part 2 is divided into three books, treating of various matters and proceedings special in their nature.

(3) Code de Commerce. The code for the regulation of commerce.

This code was enacted in 1807. Book 1 is entitled, "Of Commerce in General." Book 2, "Maritime Commerce." whole law of this subject is not embodied in this book. Book 3, "Failures and Bankruptcy." This book was very largely amended by the law of 28th May, Book 4, "Of Commercial Juris-1838. diction,"—the organization, jurisdiction, and proceedings of commercial tribunals. This code is, in one sense, a supplement to the Code Napoleon, applying the principles of the latter to the various subjects of commercial law. The two contain much that is valuable upon commercial subjects. Pardessus is one of the most able of its expositors.

(4) Code d'Instruction Criminelle. The code regulating procedure in criminal cases, taking that phrase in a broad sense.

Book 1 treats of the police; book 2, of the administration of criminal justice. It was enacted in 1808 to take effect with the Penal Code in 1811.

(5) Code Penal. The penal or criminal code.

Enacted in 1810. Book 1 treats of penalties in criminal and correctional cases, and their effects; book 2, of crimes and misdemeanors, and their punishment;

book 3, offenses against the police regulations, and their punishment. Important amendments of this code have been made by subsequent legislation.

(6) There is also a Code Forestier; and the name "code" has been inaptly given to some private compilations on other subjects.

Gregorian.

An unofficial compilation of the rescripts of the Roman emperors. It was made in the fourth century, and is not now extant.

The Theodosian Code, which was promulgated nearly a century afterwards, was a continuation of this, and of the collection of Hermogenes. The chief interest of all of these collections is in their relation to their great successor, the Justinian Code.

Hanse Towns, Laws of the.

A code of maritime law established by the Hanseatic towns.

It was first published in German, at Lubec, in 1597. In an assembly of deputies from the several towns, held at Lubec, May 23, 1614, it was revised and enlarged. The text with a Latin translation, was published with a commentary by Kuricke; and a French translation has been given by Cleirac in Us et Coutumes de la Mer. It is not infrequently referred to on subjects of maritime law.

Henri.

(French.) The best known of several collections of ordinances made during the sixteenth, seventeenth, and eighteenth centuries, the number of which in part both formed the necessity and furnished the material for the Code Napoleon.

(Haytien.) A very judicious adaptation from the Code Napoleon for the Haytiens. It was promulgated in 1812 by Christophe (Henri I.).

Hermogenian.

An unofficial compilation, made in the fourth century, supplementary to the Code of Gregorius. It is not now extant.

Institutes of Menu.

A code of Hindu law, of great antiquity, which still forms the basis of Hindu juris-prudence (Elphinstone's History of India, p. 83), and is said also to be the basis of the laws of the Burmese and of the Laos (Buckle, History of Civilization, vol. 1 p. 54, note 70).

The Institutes of Menu are ascribed to about the ninth century B. C. A translation will be found in the third volume of Sir William Jones' Works.

Justinian Code.

A collection of imperial ordinances compiled by order of the emperor Justinian.

All the judicial wisdom of the Roman civilization which is of importance to the American lawyer is embodied in the com-

ilations to which Justinian gave his name, and from which that name has received its lustre. Of these, first in contemporary importance, if not first in magnitude and present interest, was the Code. In the first year of his reign, he commanded Tribonian, a statesman of his court, to revise the imperial ordinances. The first result, now known as the Codex Vetus, is not extant. It was superseded few years after its promulgation by a new and more complete edition. Although it is this alone which is now known as the Code of Justinian, yet the Pandects and the Institutes which followed it are a part of the same system, declared by the same authority; and the three together form one codification of the law of the empire. The first of these works occupied Tribonian and nine associates fourteen months. It is comprised in twelve divisions or books, and embodies all that was deemed worthy of preservation of the imperial statutes from the time of Hadrian down. The Institutes is an elementary treatise prepared by Tribonian and two associates upon the basis of a similar work by Gaius, a lawyer of the second century.

The Pandects, which were made public about a month after the Institutes, were an abridgment of the treaties and the commentaries of the lawyers. They were presented in fifty books. Tribonian and the sixteen associates who aided him in this part of his labors accomplished this abridgment in three years. It has been judged to bear obvious marks of the haste with which it was compiled; but it is the chief embodiment of the Roman law, though not the most convenient resort for the modern student of that law.

Tribonian found the law, which for fourteen centuries had been accumulating, comprised in two thousand books, or—stated according to the Roman method of computation—in three million sentences. It is probable that this matter, if printed in law volumes such as are now used, would fill from three to five hundred volumes. The commissioners were instructed to extract a series of plain and concise laws, in which there should be no two laws contradictory or alike. In revising the imperial ordinances, they were empowered to amend in substance as well as in form.

The codification being completed, the emperor decreed that no resort should be had to the earlier writings, nor any comparison be made with them. Commentators were forbidden to disfigure the new with explanations, and lawyers were forbidden to cite the old. The imperial authority was sufficient to sink into oblivion nearly all the previously existing sources of law; but the new statutes which the emperor himself found it necessary to establish in order to explain, complete, and amend the law, rapidly accumulated throughout his long reign. These are known as the "Novels." The Code, the Institutes, the Pandects, and the Novels, with some subsequent additions, constitute the Corpus Juris Civilis. Though the Code has lost its sanction, and the Pandects are of secondary value to the present age, the Institutes stand an undisturbed monument of the science. masterly arrangement of the outline of the law there adopted is to this day a model for digests and commentaries. The familiar classification employed by Blackstone is based on this. So far as translation and modern illustration go, it is through the Institutes that the civil law is most accessible to the student.

Among English translations of the In-

stitutes are that by Cooper (Phila. 1812; N. Y. 1841),—which is regarded as a very good one,—and that by Sanders (Lond. 1853), which contains the original text also, and copious references to the Digests and Code. Among the modern French commentators are Ortolan and Pasquiere.

Mosaic Code.

The code proclaimed by Moses for the government of the Jews, B. C. 1491.

One of the peculiar characteristics of this code is the fact that whilst all that has ever been successfully attempted in other cases has been to change details without reversing or ignoring the general principles which form the basis of the previous law, that which was chiefly done here was the assertion of great and fundamental principles in part contrary and in part perhaps entirely new to the customs and usages of the people. These principles, thus divinely revealed and sanctioned, have given the Mosaic Code vast influence in the subsequent legislation of other nations than the Hebrews. The topics on which it is most frequently referred to as an authority in our law are those of marriage and divorce, and questions of affinity, and of the punishment of murder and seduction. The commentaries of Michaelis and of Wines are valuable aids to its study.

Ordonnance de la Marine.

A code of maritime law enacted in the reign of Louis XIV.

It was promulgated in 1681, and with great completeness embodied all existing rules of maritime law, including insurance. Kent pronounces it a monument of the wisdom of the reign of Louis, "far more durable and more glorious than all the military trophies won by the valor of his armies." Its compilers are unknown. An English translation is contained in the appendix to Peters' Admiralty Reports, vol. 1. The ordinance has been at once illustrated and eclipsed by Valin's commentaries upon it.

Oleron, Laws of.

A code of maritime law, which takes its name from the island of Oleron.

Both the French and the English claim the honor of having originated this code, -the former attributing its compilation to the command of Queen Eleanor, Duchess of Guienne, near which province the island of Oleron lies; the latter ascribing its promulgation to her son, Rich-The latter monarch, without doubt, caused it to be improved, if he did not originate it, and he introduced it into England. Some additions were made to it by King John. It was promulgated anew in the reign of Henry III., and again confirmed in the reign of Edward III. It is most accessible to the American profession in the translation contained in the appendix to the first volume of Peters' Admiralty Reports. The French version, with Cleirac's commentary, is contained in Us et Coutumes de la Mer. jects upon which it is now valuable are much the same as those of the Consolato del Mare.

Ostrogothic.

The code promulgated by Theodoric, king of the Ostrogoths, at Rome, A. D. 500. It was founded on the Roman law.

Prussian.

Aligemeines Landrecht. The former code of 1751 was not successful; but the attempt to establish one was resumed in 1780, under Frederic II.; and, after long and thorough discussion, the present code was finally promulgated in 1794. It is known also as the "Code Frederic."

Rhodian Laws.

A maritime code adopted by the people of Rhodes, and in force among the nations upon the Mediterranean nine or ten centuries before Christ. There is reason to suppose that the collection under this title in Vinnius is spurious, and, if so, the code is not extant. See Marsh. Ins. bk. 1, c. 4, p. 15.

Theodosian.

A code compiled by a commission of eight, under the direction of Theodosian the Younger.

It comprises the edicts and rescripts of sixteen emperors, embracing a period of

one hundred and twenty-six years. It was promulgated in the Eastern empire in 433, and quickly adopted, also, in the Western empire. The great modern expounder of this code is Gothofredus (Godefroi). The results of modern researches regarding this code are well stated in the Foreign Quarterly Review (volume 9, p. 374).

Twelve Tables.

Laws of ancient Rome, compiled on the basis of those of Solon and other Greek legislators.

They first appeared in the year of Rome 303, inscribed on ten plates of brass. In the following year, two others were added, and the entire code bore the name of the "Laws of the Twelve Tables." The principles they contained were the germ of the body of the Roman law, and enter largely into the modern jurisprudence of Europe. See a fragment of the law of the Twelve Tables, in Cooper's Justinian, 656; Gibbon's Rome, c. 44.

Visigothic.

The Lex Romani; now known as Breviarum Alaricianum. Ordained by Alaric II. for his Roman subjects, A. D. 506.

Wisbuy, Laws of.

A concise but comprehensive code of maritime law, established by the "merchants and masters of the magnificent city of Wisbuy."

The port of Wisbuy, now in ruins, was situated on the northwestern coast of Gottland, in the Baltic sea. It was the capital of the island, and the seat of an extensive commerce, of which the chief relic and the most significant record is this code. It is a mooted point whether this code was derived from the Laws of Oleron, or that from this; but the similarity of the two leaves no doubt that one was the offspring of the other. It was of great authority in the northern parts of Europe. "Lex Rhodia navalis," says Grotius, "pro jure gentium in illo mare Mediterraneo vigebat; sicut apud Gallium leges Oleronis, et apud omnes transrhenanos, legis Wisbuenses." De Jure Belli, lib. 2, c. 3. It is still referred to on subjects of maritime law. An English translation will be found in the appendix to the first volume of Peters' Admiralty Reports.

CO-EMPLOYEES.

In order to be "co-employes," so as to exempt the master from liability, the servants must be directly co-operating with each other in a particular line of business-i, e. the same line of employment-or that their usual duties shall bring them into habitual relations, so that they may exercise a mutual influence upon each other promotive of proper caution, the idea being that the relations between the servants must be such that each, as to the other, by the exercise of ordinary caution, can prevent or remedy the negligent act of the other or protect himself against its consequences. Illinois, etc., Co. v. Ziemkowski, 220 Ill. 329; North Chicago, etc., Co. v. Johnson, 114 Ill. 64; Illinois T. R. Co. v. Chapin, 128 Ill. App. 174.

COGNATES.

In civil and Scotch law. Relations through females. 1 Mackeld. Civ. Law, 137; Bell, Dict.

COGNIZANCE, CONUSANCE, OR COGNISANCE.

(Lat. cognitio, recognition, knowledge.) Acknowledgment; recognition; jurisdiction; judicial power; hearing a matter judicially.

- In Pleading.

The answer of the defendant in an action of replevin who is not entitled to the distress of goods which are the subject of the action, acknowledging the taking, and justifying it as having been done by the command of one who is so entitled. Lawes, Pl. 35, 36; 4 Bouv. Inst. note 3571. An acknowledgment made by the deforciant, in levying a fine, that the lands in question are the right of the complainant. 2 Sharswood, Bl. Comm. 350.

- Cognizance of Pleas.

Jurisdiction of causes. A privilege granted by the king to a city or town to hold pleas within the same. Termes de la Ley. It is in frequent use among the older writers on English law in this latter sense, but is seldom used, if at all, in America, except in its more general meaning. The universities of Cambridge and Oxford possess this franchise. Willes, 233; 1 Sid. 103; 11 East, 543; 1 W. Bl. 454; 10 Mod. 126; 3 Sharswood, Bl. Comm. 298.

- Claim of Cognizance (or Conusance).

An intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wils. 409; 2 Sharswood, Bl. Comm. 350, note.

It is a question of jurisdiction between the two courts (Fortesque, 157; 5 Viner, Abr. 588), and not between the plaintiff and defendant, as in the case of plea to the jurisdiction, and must be demanded by the party entitled to conusance, or by his representative, and not by the defendant or his attorney (1 Chit. Pl. 403).

There are three sorts of conusance: Tenere placita, which does not oust another court of its jurisdiction, but only creates a concurrent one. Cognitio placitorum, when the plea is commenced in one court, of which conusance belongs to another. A conusance of exclusive jurisdiction; as, that no other court shall hold plea, etc. Hardr. 509; Bac. Abr. "Courts" (D).

COGNOVIT ACTIONEM.

Defined.

A confession of judgment signed by the defendant in the action after suit is brought. Little v. Dyer, 138 Ill. 278.

At Common Law.

A "cognovit actionem," at common law, was a written confession of the action subscribed by the defendant but not sealed, and authorizing the plaintiff to sign judgment and issue execution for a

named sum. Willer v. French, 27 Ill. App. 81.

COHABIT.

(Lat. con and habere.) To live together in the same house, claiming to be married. The word does not include in its signification, necessarily, the occupying the same bed (1 Hagg. Consist. 144; 4 Paige, Ch. [N. Y.] 425; 116 U. S. 55), though the word is popularly and sometimes in statutes, used in this latter sense (20 Me. 210; Bish. Mar. & Div. § 506, note). It does not include mere sexual intercourse, without a habitual dwelling together. 36 Ark. 84; 10 Mass. 153.

To live together in the same house. Used without reference to the relation of the parties to each other as husband and wife, or otherwise. Used of sisters or other members of the same family, or of persons not members of the same family, occupying the same house. 2 Vern. 323; Bish. Mar. & Div. 506, note.

COHABITATION.

"Cohabitation," as applied to marriage, means the living together of a man and woman in the usual manner resulting from marriage, and not a habit of visiting each other, however frequent. Robinson v. Robinson, 188 Ill. 379.

COLD-WATER ORDEAL.

The trial which was anciently used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river. If they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected. Wharton.

COLLATERAL.

Accompanying; a side or secondary fact; subsidiary; subordinate; indirect. People v. McDonald, 264 Ill. 517.

COLLATERAL ATTACK.

In a collateral attack on a judgment the insistence is that the judgment is without effect, void, or being avoidable, has been made void by the party entitled to repudiate it, or is based on the assertion that for some reason the court lacked jurisdiction to render a valid and conclusive judgment. Chudleigh v. Chicago R. I. & P. Ry. Co., 51 Ill. App. 495. See also Reizer v. Mertz, 223 Ill. 564, where it was held that a judgment was collaterally assailed when sought to be impeached in an action other than that in which it was rendered.

COLLATERAL LIMITATIONS.

A limitation in the conveyance of an estate, giving an interest for a specified period, but making the right of enjoyment depend upon some collateral event, as, an estate to A. till B. shall go to Rome. Park, Dower, 163; 4 Kent, Comm. 128; 1 Washb. Real Prop. 215.

COLLATERAL PROCEEDINGS.

Another proceeding not for the direct purpose of impeaching the proceeding to which it is said to be collateral. People v. McDonald, 264 Ill. 517.

A proceeding for the condemnation of the right of way for a railroad is a collateral proceeding, so far as concerns the question of the corporate existence of the company seeking the condemnation. Peoria & P. U. Ry. Co. v. Peoria & F. Ry. Co., 105 Ill. 116.

COLLATERAL PROMISE.

A promise is collateral if another is the primary or principal debtor, and the relations of debtor and creditor remain unchanged both as to the right and the remedy, and no trust is created by the transaction. Eddy v. Roberts, 17 Ill. 507; Robinson v. Holmes, 82 Ill. App. 308.

COLLATERAL UNDERTAKING.

A contract based upon a pre-existing debt, or other liability, and including a

promise to pay, made by a third person having immediate respect to and founded upon such debt or liability, without any new consideration moving to him. Robinson v. Holmes, 82 Ill. App. 308.

COLLECTED.

Fines and penalties paid to a clerk of court are "collected" by the State's attorney, within the meaning of section 8 of the Fees and Salaries Act (J. & A. ¶ 5600), when the prosecution of the case which resulted in the imposition of the fine or penalty was conducted by the State's attorney and when the law makes it the duty of the state's attorney to collect fines and penalties imposed in suits not prosecuted by him, it being presumed, where there is no evidence to the contrary, that the state's attorney prosecuted all suits which it was his duty to prosecute. Galpin v. Chicago, 269 Ill. 48.

COLLECTOR OF THE CUSTOMS.

An officer of the United States, appointed for the term of four years, but removable at the pleasure of the president. Act May 15, 1820, § 1; 3 Story, U. S. Laws, 1790.

The duties of a collector of the customs are to receive the entries of all ships or vessels, and of the goods, wares, and merchandise imported in them, estimate the amount of duties payable thereupon, and receive all moneys paid for duties. Act March 2, 1779, § 21; 1 Story, U. S. Laws, 590.

COLLIERY.

A mine, pit or place where coals are dug, with the machinery used in discharging and raising the coal. Springside, etc., Co. v. Grogan, 53 Ill. App. 65.

COLLISIONS.

Automobile Insurance.

A policy insuring automobiles from damage from the "collisions" of such automobiles with other vehicles or objects means, by the word "collisions" cases of "striking against" vehicles or objects not in motion. Lepman v. Employers, etc., Co., 170 Ill. App. 381.

There may be a "collision" between vessels within the meaning of the term as used in policies of marine insurance where a moving vessel strikes another which is anchored or tied to a dock. Lepman v. Employers, etc., Co., 170 Ill. App. 381.

COLLOQUIM.

The office of the "colloquium" in a declaration alleging slander or libel, is to connect the words with the plaintiff, and with the extrinsic matters, if any, set forth by way of inducement. McLaughlin v. Fisher, 136 Ill. 117.

COLLUSION.

Parties who corruptly collude in the management of a divorce proceeding, so that both are in reality plaintiffs, although of record plaintiff and defendant, are none the less guilty of collusion, so as to bar the action, although the case in a good one. Belz v. Belz, 33 Ill. App. 108.

COLONY.

A union of citizens or subjects who have left their country to people another, and remain subject to the mother-country. 3 Wash. C. C. (U. S.) 287.

COLOR.

An apparent, or prima facie, right. Bride v. Watt, 23 Ill. 459.

An apparent but legally insufficient ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action. 3 Sharswood, Bl. Comm. 309; 4 Barn. & C. 547; 1 Moore & P. 307. To give color is to give the plaintiff credit for having an apparent or prima facie right of action, independent of the matter introduced to destroy it, in order to introduce new matter in avoidance of the declaration. It was necessary that all pleadings in confession and avoidance should give color. See 3

Sharswood, Bl. Comm. 309, note; 1 Chit. Pl. 531.

Express color is a feigned matter, pleaded by the defendant, from which the plaintiff seems to have a good cause, whereas he has in truth only an appearance or color of cause. Bac. Abr. "Trespass" (I 4); 1 Chit. Pl. 530. It was not allowed in the plaintiff to traverse the colorable right thus given, and it thus became necessary to answer the plea on which the defendant intended to reply.

Implied color is that which arises from the nature of the defense, as where the defense crusists of matter of law, the facts being admitted, but their legal sufficiency denied, by matters alleged in the plea. 1 Chit. Pl. 528; Steph. Pl. 206.

By giving color, the defendant could remove the decision of the case from before a jury, and introduce matter in a special plea, which would otherwise oblige him to plead the general issue. 3 Bl. Comm. 309.

The colorable right must be plausible, or afford a supposititious right, such as might induce an unlearned person to imagine it sufficient, and yet it must be in legal strictness inadequate to defeat the defendant's title as shown in the plea. Comyn, Dig. "Pleading;" Keilw. 1036; 1 Chit. Pl. 531; 4 Dane, Abr. 552; Archb. Pl. 211.

COLOR OF AUTHORITY.

Authority derived by an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Howard v. Burke, 248 Ill. 229.

COLOR OF OFFICE.

(Lat. colore officii.) A pretense of official right to do an act made by one who has no such right. 9 East, 364. It implies an illegal claim of authority to do an act by virtue of one's office (23 Wend. [N. Y.] 606; 1 N. Y. 365; 16 N. Y. 439, 442), and is distinguished from by "virtue of office," implying lawful power (4 N. Y. 173).

COLOR OF TITLE.

That which in appearance is title but which in reality is no title. Howard v. Burke, 248 Ill. 229.

Anything in writing connected with the title which serves to define the extent of the claim. 70 Ga. 809.

A deed void on its face is not color of title. 27 Minn. 449; 2 Pet. (U. S.) 241; 7 Wend. (N. Y.) 152. But see, contra, 94 Ala. 135; 68 Iowa, 507. But defects in the execution (112 N. C. 223; 27 Ill. 224), or lack of title in the grantor (53 N. Y. 287; 71 Ill. 38), will not impair the effect of a deed to give color of title.

COLORABLE IMITATION.

As applied to trademark (q. v.), colorable imitation is such a close or ingenious imitation as to be calculated to deceive ordinary persons. L. R. 5 H. L., at page 519.

COMBINATION COVERAGE.

An expression used in insurance meaning "the covering of all employes against the Illinois Workmen's Compensation Act or any common law liability prior to the Compensation Act." U. S., etc., Co. v. Crown, etc., Co., 195 Ill. App. 268.

COMBINED DRAINAGE.

The expression "combined drainage," used in section 11 of the act of 1885 (J. & A. ¶ 4485), known as the Farm Drainage Act, refers to a system of contribution to the expenses of constructing, eximproving and maintaining tending, ditches, though not to a combination of ditches, so that where the lands are so related that the same system will benefit all of them, and it is proposed to construct it at the expense of all the owners, in proportion to the benefits to their respective lands received, they may proceed to accomplish it without resort to condemnation, in the mode prescribed. People v. Mineral Marsh, etc., District, 193 Ill. 434; Klinger v. People, 130 Ill. 513.

COMING TO THE BOTTOM.

The expression "coming to the bottom," used in section 28b of the Act of 1899, now section 10b of the Miners' Act (J. & A. ¶7484), includes cases where the miner is approaching the bottom of the shaft from above or from his working place below, in the one case with a view to leaving the cage, and in the other with a view to entering it. Robertson v. Donk, etc., Co., 238 Ill. 347.

COMITATUS.

(Lat. from comes). A county; a shire; the portion of the country under the government of a comes or count. 1 Bl. Comm. 116.

An earldom. Earls and counts were originally the same as the comitates. 1 Ld. Raym. 13.

The county court, of great dignity among the Saxons. 1 Spence, Eq. Jur. 42, 66.

COMMENCED.

An action is "commenced," within the meaning of an insurance policy, when plaintiff submits himself and the subject matter to the jurisdiction of the court, and the court or law commences acting under his claim for investigation, and this is done by issuing a summons, although not delivered to the sheriff or served on defendant. Schroeder v. Mercantile, etc., Co., 104 Ill. 75.

COMMENCEMENT OF ACTION OR SUIT.

What Constitutes.

The issuing out of a writ of summons, irrespective of whether or not it is delivered to the sheriff for service, constitutes the commencement of a suit. Schroeder v. Mercantile, etc., Co., 104 Ill. 76; Chicago & N. W. Ry. Co. v. Jenkins, 103 Ill. 594; Feasle v. Simpson, 2 Ill. 32; Schmidt v. Balling, 91 Ill. App. 390. But see Collins v. Manville, 170 Ill. 616, where it is said that the commencement of a suit is the issue of a summons and delivery to the sheriff for service.

The mode of "commencing" suits in chancery is by filing a bill of complaint with the clerk of the proper court, setting forth the nature of the complaint. Chancery Act § 4 (J. & A. ¶884); Johnson v. Davidson, 162 Ill. 234.

The filing of a bill and taking out of a subpoena, and making a bona fide attempt to serve it is the commencement of a suit in equity, as against the defendant. Fairbanks v. Farwell, 141 Ill, 368.

COMMENCEMENT.

Bringing in Party.

Where a new party is brought into a pending action by summons, the issuing of such summons constitutes the commencement of a new suit as to him. U. S., etc., Co. v. Ludwig, 108 Ill. 518; McCarthy v. Hetsner, 70 Ill. App. 484.

Substituting Party.

Substituting the party having the legal right to sue for one improperly named as plaintiff is not the commencement of a new action. U. S., etc., Co. v. Ludwig, 108 Ill. 518. See also Brought.

Scire Facias.

Bringing a writ of scire facias to revive a judgment is not the commencement of a suit. Challenor v. Niles, 78 Ill. 79.

COMMENDATION.

In feudal law. Commendation was where an owner of land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant. Commendation, and the grant of beneficia or feuds, were the two principal modes by which the feudal system was established. See 1 Stubbs, Const. Hist. 153.

COMMERCE.

The exchange of property, including the usual agencies of communication and transportation to effect the exchange, and extending to the means employed to move the property involved and the persons making the contract. People v. Chicago I. & L. Ry. Co., 223 Ill. 590.

The various agreements which have for their object facilitating the exchange of the products of the earth or the industry of man, with an intent to realize a profit. Pardessus, Dr. Com. note 1. Any reciprocal agreements between two persons, by which one delivers to the other a thing, which the latter accepts, and for which he pays a consideration. If the consideration be money, it is called a "sale;" if any other thing than money, it is called "exchange" or "barter." Domat, Dr. Pub. liv. 1, tit. 7, § 1, note 2.

Congress has power, by the constitution, to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent, Comm. 431; Story, Const. § 1052 et seq. The sense in which the word "commerce" is used in the constitution seems not only to include traffic, but intercourse and navigation (Story, Const. § 1057; 9 Wheat. [U. S.] 190, 191, 215, 229; 12 Wheat. [U. S.] 419; 102 U. S. 691; 4 Biss. [U. S.] 156; 31 Iowa, 187), but only such intercourse as consists in trade or traffic (1 Stew. & P. [Ala.] 327).

COMMERCIA BELLI.

Compacts entered into by belligerent nations to secure a temporary and limited peace. 1 Kent, Comm. 159.

Contracts made between citizens of hostile nations in time of war. 1 Kent, Comm. 104.

COMMERCIAL INSURANCE.

A subsidiary species of insurance contract. People v. Potts, 264 Ill. 526.

COMMERCIAL RAILROADS.

What Constitutes.

Commercial railroads embrace all railroads for general freight and passenger traffic between one town and another. Hartzell v. Alton, etc., Co., 263 Ill. 206; Aurora v. Elgin, etc., Co., 227 Ill. 496; Wilder v. Aurora, etc., Co., 216 Ill. 528.

Electric Railroad Transporting Freight and Passengers.

A railroad running across the country turn from city to city, carrying both passen- 262.

gers and freight, is a commercial railroad although operated by electricity instead of steam. Hartzell v. Alton, etc., Co., 183 Ill. App. 644.

A street railroad authorized to carry both freight and passengers is a commercial railroad. Wilder v. Aurora, etc., Co., 216 Ill. 529.

COMMISSIONER.

Statute-Refers to Member of Board.

The word "commissioner," as used in a statute, merely describes a member of a board which possesses official power and exercises official duties. People v. Wright, 70 Ill. 395.

COMMISSIONS.

A certain percentage on moneys received and paid over. Bryans v. Buckmaster, 1 Ill. 410.

COMMIT SUICIDE.

The phrases "commit suicide," "take his own life," "die by his own hand," and "die by his own act," as used in policies of insurance, are of similar meaning, all conveying the idea of voluntary and intentional self destruction. Royal Arcanum v. Pels, 209 Ill. 35; Grand Lodge v. Wieting, 168 Ill. 419.

COMMITMENT.

The act of sending an accused or convicted person to prison. Guthmann v. People, 203 Ill. 262.

COMMITTED.

Section 18 of division 13 of the Criminal Code (J. & A. ¶4137), providing for the discharge of a person "committed for a criminal or supposed criminal offense," and not tried within four months of the date of commitment, refers, by the word "committed," to the date when the defendant was committed to jail and not to the date when the indictment was returned. Guthmann v. People, 203 Ill. 262.

COMMODATUM.

A species of bailment, by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him to be used by him without reward; loan for use. Bailm. § 221.

COMMODITY.

Defined.

An article of trade or commerce; a movable article of value; something that is bought and sold; commerce, privilege, profit, gain, property, goods, wares, merchandise. McKeon v. Wolf, 77 Ill. App. 333.

Primary Meaning.

The primary meaning of the word commodity, according to the lexicographers, is convenience. McKeon v. Wolf, 77 Ill. App. 333.

Secondary Meaning.

The secondary meaning of the word "commodity" is that which affords convenience of advantage, especially in commerce, including everything movable which is bought or sold. McKeon v. Wolf, 77 Ill. App. 333. See also People v. Federal Security Co., 255 Ill. 563; Peterson v. Currier, 62 Ill. App. 169 (quoting part of foregoing definition).

Franchises.

The term "commodities" has been held to include corporate franchises granted by a foreign government, which are properly listed for taxation under a constitution authorizing the taxation of commodities. People v. Federal, etc., Co., 255 Ill. 563.

Stocks and Bonds.

The term "commodities" is broad enough to include stocks and bonds. People v. Federal, etc., Co., 255 III. 563.

Subjects of Trade.

The term "commodities" includes anything movable that is the subject of trade App. 334; Peterson v. Currier, 62 Ill. App. 169.

COMMON.

As an adjective,—owned by several; usual; habitual. As a noun,—an incorporeal hereditament, which consists in a profit which one man has in connection with one or more others in the land of another. 12 Serg. & R. (Pa.) 32; 10 Wend. (N. Y.) 647; 11 Johns. (N. Y.) 498; 16 Johns. (N. Y.) 14, 30; 10 Pick. (Mass.) 364; 3 Kent, Comm. 403.

Common of Estovers.

The liberty of taking necessary wood, for the use of furniture of a house or farm. from another man's estate. This right is inseparably attached to the house or farm, and is not apportionable. If, therefore, a farm entitled to estovers be divided by the act of the party among several tenants, neither of them can take estovers, and the right is extinguished. 2 Bl. Comm. 34; Plowd. 381; 10 Wend. (N. Y.) 639; 1 Barb. (N. Y.) 592. It is to be distinguished from the right to estovers which a tenant for life has in the estate which he occupies. See "Estovers."

Common of Pasture.

The right of feeding one's beasts on another's land. It is either appendant, appurtenant because of vicinage, or in gross.

Common of Piscary.

The liberty of fishing in another man's water. 2 Bl. Comm. 34.

Common Appendant.

A right annexed to the possession of land, by which the owner thereof is entitled to feed his beasts on the wastes of the manor. It can only be claimed by prescription, so that it cannot be pleaded by way of custom. 1 Rolle, Abr. 396; 6 Coke, 59.

Common Appurtenant.

This differs from common appendant or acquisition. McKeon v. Wolf, 77 Ill. | in the following particulars, vis.: It may

be claimed by grant or prescription, whereas common appendant can only arise from prescription; it does not arise from any connection of tenure, nor is it confined to arable land, but may be claimed as annexed to any kind of land; it may be not only for beasts usually commonable, such as horses, oxen and sheep, but likewise for goats, swine, etc.: it may be severed from the land to which it is appurtenant; it may be commenced by grant; and an uninterrupted usage for twenty years is evidence of a grant. In most other respects, commons appendant and appurtenant agree. 2 Greenl. Cruise, Dig. 5; Bouv. Inst. note 1650; 30 Eng. Law & Eq. 176; 15 East, 108.

Common Because of Vicinage.

The right which the inhabitants of two or more contiguous townships or villas have of intercommoning with each other. It ought to be claimed by prescription, and can only be used by cattle levant and couchant upon the lands to which the right is annexed, and cannot exist except between adjoining townships, where there is no intermediate land. Co. Litt. 122a; 4 Coke, 38a; 7 Coke, 5; 10 Q. B. 581, 589, 604; 19 Q. B. 620; 18 Barb. (N. Y.) 523.

It is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind. 2 Bl. Comm. 33; Co. Litt. 12a; Bracton, fol. 222.

Dr. Wooddeson observes that Blackstone's account of common pur cause de vicinage is not properly a definition, but rather a descriptive example or illustration, there being other occasions when the excuse for trespass may be used. 2 Wooddeson, Lect. 50.

Common in Gross.

A right of common which must be claimed by deed or prescription. It has no relation to land, but is annexed to a man's person, and may be for a certain or an indefinite number of cattle. It cannot be alienated so as to give the en-

tire right to several persons to be enjoyed by each in severalty. And where it comes to several persons by operation of law, as by descents, it is incapable of division among them, and must be enjoyed jointly. Common appurtenant for a limited number of cattle may be granted over, and by such grant becomes common in gross. Co. Litt. 122a, 164a; 5 Taunt. 244; 16 Johns. (N. Y.) 30; 2 Bl. Comm. 34.

See, generally, Viner, Abr.; Bac. Abr.; Comyn. Dig.; 2 Sharswood, Bl. Comm. 34 et seq.

COMMON BAR.

In pleading. A plea to compel the plaintiff to assign the particular place where the trespass has been committed. Steph. Pl. 256. It is sometimes called a "blank bar."

COMMON BARRATRY.

One is guilty of "common barratry," within the meaning of the Criminal Code, if he "shall wickedly and wilfully excite and stir up any suits or quarrels between the people of this state, either at law or otherwise, with a view to promote strife or contention." Criminal Code, div. 1, § 26 (J. & A. ¶ 3508).

COMMON CARRIER.

Defined.

One who undertakes, for hire, to transport the goods of such as choose to employ him, from place to place. Illinois C. R. Co. v. Frankenberg, 54 Ill. 95. To the same effect see Swift v. Ronan, 103 Ill. App. 485 (quoting Anderson L. Dict.).

One who plies between certain termini, and openly professes to carry goods for all such persons as choose to employ him. Swift v. Ronan, 103 Ill. App. 485.

One who undertakes for hire to transport goods from one place to another. Swift v. Ronan, 103 Ill. App. 484. To a similar effect see Hastings, etc., Co. v. Chicago, 135 Ill. App. 273 (quoting 6 Am. & Eng. Enc. L. 237).

Elevator.

A person operating a passenger elevator is a common carrier of passengers. Dunn J. dissenting opinion Steiskal v. Marshall Field & Co., 238 Ill. 99; Beidler v. Branshaw, 200 Ill. 429; Chicago, etc., Co. v. Nelson, 197 Ill. 338; Springer v. Ford, 189 Ill. 434; Hartford, etc., Co. v. Sollitt, 172 Ill. 225; Anderson, etc., Co. v. Greenburg, 118 Ill. App. 224; Beidler v. Branshaw, 200 Ill. 429; 102 Ill. App. 191.

Expressmen.

Ordinary carriers and expressmen carrying freight to and from a depot or warehouse or between places in the same locality, or between different localities, are common carriers. Hastings, etc., Co. v. Chicago, 135 III. App. 273.

Ferryman.

Ferrymen in the exercise of their franchise, and as to property on their boats are exercising a calling in many respects analogous to that of common carriers. Einstman v. Black, 14 Ill. App. 384.

Forwarding Agent.

A forwarding agent is not a common carrier. Ingram v. American, etc., Co., 162 Ill. App. 481.

Omnibus Line.

The proprietor of a line of omnibus and baggage wagons, engaged in carrying passengers and baggage for hire, for all persons choosing to hire him, between railroad stations, hotels and other parts of Chicago, is a common carrier. Parmelee v. Lowitz, 74 Ill. 117.

Parlor Car Company.

The Pullman Palace Car Company, which only undertakes to accommodate a certain class of passengers on a railroad train who have already paid their fare and are provided with a first class ticket, is not a common carrier, the railroad company being the carrier, and the Palace Car Company merely providing such passengers with a right to ride in a particular place on the train. Pullman, etc., Co. v. Smith, 73 Ill. 363.

Railroad.

A railroad company is a common carrier of passengers and produce. Walther v. Chicago & W. I. R. Co., 215 Ill. 462.

River Steamboat.

Persons operating steamboats on inland navigable rivers are common carriers. Dunseth v. Wade, 3 Ill. 289.

Street Railway.

Street railway companies are common carriers of passengers. North Chicago E. Ry. Co. v. Peuser, 190 Ill. 70.

Tow Boat.

The owner of a steamboat engaged in towing is not a common carrier. McCaffrey v. Knapp, etc., Co., 74 Ill. App. 85.

COMMON DAY.

(Law Lat. dies communis.) In old English practice. An ordinary day in court (St. 13 Rich. II. st. 1, c. 17), such as octabis Michaelis (the octave of St. Michael), quindena Paschae (the quinzime of Easter), etc. (St. 51 Hen. III. sts. 2, 3; Cowell; Termes de la Ley).

COMMON FORM.

Proof of Will.

Proof of a will in "common form," according to the English practice, was made by taking the will before the judge of the proper court of probate and proving it by attesting witnesses without citing or giving notice to the parties interested. Dibble v. Winter, 247 Ill. 256; Luther v. Luther, 122 Ill. 563. See also Solemn Form.

COMMON GAMING HOUSE.

The expression "common gaming house," used in section 127 of division 1 of the Criminal Code (J. & A. ¶ 3730), includes a socialed "betting room," or room under the grandstand at a race track, where pools are sold on horse races. Swigart v. People, 154 Ill. 300.

The expression "common gaming

house," used in section 129 of the Criminal Code of 1845, now section 127 of division 1 of the Criminal Code (J. & A. ¶ 3730), does not include a billiard saloon, where there was no evidence that it was kept for the purpose of playing billiards for money, although those playing did so for the purpose of determining who should pay the expense of using the tables. Harbaugh v. People, 40 Ill. 296.

COMMON INN.

If a person lets lodgings only, and upon a previous contract with every person who comes, and does not afford entertainment for the public at large, indiscriminately, it is not a common inn. Pullman, etc., Co. v. Smith, 73 Ill. 363.

A Pullman palace car, which undertakes to accommodate a certain class who have already paid their fare, and are provided with a first class ticket, is not a common inn. Pullman, etc., Co. v. Smith, 73 Ill. 363.

COMMON INTENT.

The natural sense given to words. is the rule that when words are used which will bear a natural sense and an artificial one, or one to be made out by argument and inference, the natural sense shall prevail. It is simply a rule of construction, and not of addition. Common intent cannot add to a sentence words which have been omitted. 2 H. Bl. 530. In pleading, certainty is required; but certainty to a common intent is sufficient, -that is, what, upon a reasonable construction, may be called certain, without recurring to possible facts. Co. Litt. 203a; Doug. 163.

COMMON LAW.

Defined.

A system of elementary rules and of general judicial declarations of principles, which are continually expanding with the progress of society, adapting themselves to the gradual changes of trade, commerce, arts, inventions and the exigencies and usages of the country. Kreitz v. Behrensmeyer, 149 Ill. 502.

A beautiful system, containing the wisdom and experience of ages, being, like the people it ruled and protected, simple and crude in its infancy, and becoming enlarged, improved and polished as the nation advanced in civilization, virtue and intelligence. Penny v. Little, 4 Ill. 304.

That system of law or form of the science of jurisprudence which has prevailed in England and in the United States of America, in contradistinction to other great systems, such as the Roman or civil law. As distinguished from statute law, those principles, usages, and rules of action applicable to the government and security of persons and of property, which do not rest for their authority upon any express and positive declaration of the will of the legislature. 1 Kent, Comm. 492.

The body of rules and remedies administered by courts of law, technically so called, in contradistinction to those of equity, and to the canon law. 3 Pet. (U. S.) 446.

As used in the United States, it includes both the unwritten law of England and the statutes passed before the settlement of the United States. 5 Pet. (U. S.) 241; 18 Wis. 147.

The common law is not fixed in its scope, but develops new principles by analogy as new conditions arise. 42 Ala. 597.

Lex Mercatoria.

The lex mercatoria, governing negotiable paper, is a part of the common law. Cook v. Renick, 19 Ill. 601; Belford v. Bangs, 15 Ill. App. 78.

Law Merchant Compared.

The law merchant was originally distinguishable from the common law in this, that the former was formed by the usage and recognition of commercial men, by slow and imperceptible degrees, while the latter was formed by the decisions of the courts, taking notice of the wants, the necessities, and the convenience of the subject, and recognizing and adopting the usage which such wants, necessities and convenience created. Cook v. Renick, 19 Ill. 601.

Rule of Medes and Persians.

The traditional rule of the Medes and Persians has never been recognized as part of the common law. Reapers' Bank v. Willard, 24 Ill. 439.

Statute of Charitable Uses.

The statute of 43 Elizabeth, known as the statute of charitable uses, is part of the common law in this state. Welch v. Caldwell, 226 Ill. 496; Hoeffer v. Clogan, 171 Ill. 468.

COMMON LAW CONTEMPT.

A contempt which is criminal in its nature. People v. Seymour, 191 Ill. App. 388.

COMMON LAW DEDICATION.

Statutory Dedication Distinguished.

The difference between a statutory and a common law dedication is that one vests the legal title to the ground set apart for public uses in the municipal corporation in trust for the public, while the other leaves the legal title in the owner, charged with the same rights and interests in the public which it would have if the fee were in the corporation. Hill v. Kimball, 269 Ill. 415; Chicago R. I. & P. R. Co. v. Joliet, 79 Ill. 32.

Recording of Defective Plat.

Where property is subdivided and a plat made thereof which does not comply in every respect with the statute, but which is recorded, there is a common law dedication. Marshall v. Lynch, 256 Ill. 526.

COMMON LAW MARRIAGE.

Essentials.

To constitute a marriage legal, at common law, the contract and consent must be per verba de presenti, or if made per verba de futuro cum copula, the copula is presumed to have been allowed on the faith of the marriage promise, and that so the parties, at the time of the copula, accepted of each other as man and wife. In re Estate of Maher, 204 Ill. 28; Maher

v. Maher, 183 III. 65; McKenna v. McKenna, 180 III. 579; Hiler v. People, 156 III. 519; Hebblethwaite v. Hepworth, 98 III. 133; Port v. Port, 70 III. 486. To the same effect see Stoltz v. Doering, 112 III. 240.

To constitute a common law marriage prior to 1905 no particular words were necessary, but if what is done and said evidences an intention by the parties to assume the marriage status, and the parties thereupon enter into the relation of husband and wife, that was sufficient, whatever may be the form of expression used. Herald v. Moker, 257 Ill. 29; Heymann v. Heymann, 218 Ill. 640. To the same effect see Laurence v. Laurence, 164 Ill. 374.

Agreement for Future Marriage.

In order to constitute a common law marriage, it is not sufficient to agree to present cohabitation and a future marriage when convenient. In re Estate of Maher, 204 Ill. 28; Maher v. Maher, 183 Ill. 65; McKenna v. McKenna, 180 Ill. 580.

COMMON-LAW PROCEDURE ACTS.

Three acts of parliament, passed in the years 1852, 1854 and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure act of 1852 is St. 15 & 16 Vict. c. 76, that of 1854, St. 17 & 18 Vict. c. 125, and that of 1860, St. 23 & 24 Vict. c. 126. Mozley & W.

COMMON NUISANCE.

Hawkins, in his Pleas of the Crown, defines a common nuisance as an offense against the public, by doing anything injurious to all the King's subjects, or by omitting to do that which the common good requires. Earp v. Lee, 71 Ill. 194.

One that affects the public at large and is a violation of a public right, either by a direct encroachment upon public property, or by doing some act which tends to the common injury, or by omitting to do, in the discharge of a legal duty, that which the common good requires. Chicago v. Gunning System, 214 Ill. 635.

COMMON OR ORDINARY DILIGENCE.

That degree of diligence which men in general exert in respect to their own concerns, and not any one man in particular. Rockford v. Hildebrand, 61 Ill. 160; Chicago, etc., Co. v. Grommes, 110 Ill. App. 116.

COMMON RECOVERY.

A judgment recovered in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in the suit, which recovery, being a supposed adjudication of the right, binds all persons, and vests a free and absolute fee simple in the recov-A common recovery is a kind of conveyance, and is resorted to when the object is to create an absolute bar of estates tail, and of the remainders and reversions expectant on the determination of such estates. 2 Bl. Comm. 357. Though it has been used in some of the states, this form of conveyance is nearly obsolete, easier and less expensive modes of making conveyances, which have the same effect, having been substituted. Bouv. Inst. notes 2092, 2096; 7 N. H. 9; 9 Serg. & R. (Pa.) 390; 2 Rawle (Pa.) 168; 4 Yeates (Pa.) 413; 1 Whart. (Pa.) 151; 6 Mass. 328.

COMMON RUN OF PEOPLE.

In an action for personal injuries it is error to instruct the jury that ordinary care is the care usually exercised by the "common run of people" under similar circumstances, since the quoted expression does not mean "reasonably prudent men," but takes in not only reasonably prudent men but possibly the ignorant and careless, while the test of ordinary care is reasonable prudence. National, etc., Co. v. Carlson, 42 Ill. App. 184.

COMMON SCHOOL.

A school that begins with the rudimental elements of an education, whatever else it may embrace, as contradistinguished from academies or universities devoted exclusively to teaching advanced pupils in the classics, and in all the higher branches of study usually included in the curriculum of the colleges. Powell v. Board of Education, 97 Ill. 378.

COMMON SCHOOL EDUCATION.

The expression "common school education," used in section 1 of article 8 of the Constitution of 1870, is nowhere defined in the Constitution, and since this is so, it is no part of the duty of the courts to declare by judicial construction what particular branches of study shall be within its meaning, which question is proper for the determination of the legislature. Powell v. Board of Education, 97 Ill. 378; Richards v. Raymond, 92 Ill. 618.

COMMON SCOLD.

One who, by the practice of frequent scolding, disturbs the neighborhood. Bish. Crim. Law, § 147.

The offense of being a common scold is cognizable at common law. It is a particular form of nuisance, and was punishable by the ducking stool at common law, in place of which punishment fine and imprisonment are substituted in the United States. 12 Serg. & R. (Pa.) 220; 3 Cranch, C. C. (U. S.) 620. See 1 Term R. 748; 6 Mod. 11; 4 Rog. (N. Y.) 90; 1 Russ. Crimes, 302; Rosc. Crim. Ev. 665.

COMMON SEAL.

The seal of a corporation. It was an ancient and technical rule of the common law that a corporation could not manifest its intentions by any personal act or oral discourse, and that it spoke and acted only by its common seal. 4 Kent, Comm. 288. This is said to be no longer law in the United States. 7 Cranch (U. S.) 299; 9 Paige, Ch. (N. Y.) 188; 21 Vt. 343; 21 Miss. 408; 1 Smith (Ind.) 98; 6 Ga. 166; 2 Kent, Comm. 289.

COMMON TOOL.

A railroad lifting jack is not a common tool within the meaning of the rule exempting a master from the duty of providing reasonably safe tools for the use of his employes when the tool used is a common tool. Long v. Chicago, B. & D. Ry. Co., 164 Ill. App. 33.

COMMORIENTES.

Those who perish at the same time in consequence of the same calamity.

COMMUNICATED AND EXTENDED.

In an action to recover for a fire set by sparks from a fire set out on neighboring property, where the declaration alleged that the fire set out by the defendants was "communicated and extended" to property on plaintiff's land, plaintiff is not required to prove a burning over all the intervening land between his property and the place where the fire was set out, but may recover on proof that sparks, whether from a building or vegetation, are blown to his property under conditions where any reasonable person could see what might have ensued. Nall v. Taylor, 156 Ill. App. 151.

COMMUNICATION.

Information; consultation; conference. A letter is a communication. 49 N. J. Law, 256. But see 4 Metc. (Mass.) 459.

COMMUNIS ERROR FACIT JUS.

A common error makes law. What was at first illegal, being repeated many times, is presumed to have acquired the force of usage; and then it would be wrong to depart from it. Hilliard, Real Prop. 268; 1 Ld. Raym. 42; 6 Clark & F. 172; 3 Maule & S. 396; 4 N. H. 458; 2 Mass. 357. The converse of this maxim is communis error non facit jus, a common error does not make law. Coke, 4th Inst. 242; 3 Term R. 725; 6 Term R. 564.

COMMUNITAS REGNI ANGLIAE.

(Lat.) The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 Bl. Comm. 148. According to Cowell, it signifies the barons and tenants in capite of the kingdom. But in St. Cart. Conf. 49 Hen. III., it is used in the sense of "commonalty" as distinguished from the prelates, earls and barons (prelatorum, comitum, baronum et communitatis regni).

COMMUNITY PROPERTY.

Property acquired during the existence of the matrimonial relation, which in some states (Louisiana, Texas, New Mexico, Arizona, California, Idaho, and Washington) belongs equally to the spouses. The doctrine is of Spanish origin. See Schmidt, Civ. Law, p. 28; White, New Recop. p. 60.

The husband as head of the community (q. v.), has control of the property during the existence of the marriage relation (101 Cal. 563; 3 Wash. 592); but on dissolution of the community by death or divorce, it is divided equally between the parties (63 Cal. 77); the testamentary power of the deceased spouse being limited to the testator's moiety (18 Cal. 291).

COMMUTATION.

The substitution of a punishment of a lower degree for one of a higher degree. People v. Murphy, 257 Ill. 566.

COMPACT.

Closely and firmly united, as the parts or particles of solid bodies having the parts or particles packed together; close; solid; dense. People v. Swift, 270 Ill. 534; People v. Crossley, 261 Ill. 99; People v. Thompson, 155 Ill. 478.

An agreement; a contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. bk. 3, c. 3; Rutherforth, Inst. bk. 2, c. 6, § 1.

The parties may be nations, states, or individuals, but it is commonly applied to the former, and in this sense is a broader term than "treaty." 14 Pet. (U. S.) 572.

As applied to individuals, it is synonymous with "contract." 8 Wheat. (U. S.) 92.

COMPACT TERRITORY.

The expression "compact territory," used in section 6 of article 4 of the Constitution of 1870, relating to the formation of senatorial districts, as applied to mere territorial surface, means closely united territory. People v. Thompson, 155 Ill. 478.

COMPANY.

The terms "firm" and "partnership" are synonymous with "company." People v. Strauss, 97 Ill. App. 55.

COMPARISON OF HANDWRITING.

A mode of deducing evidence of the authenticity of a written instrument, by showing the likeness of the handwriting to that of another instrument proved to be that of the party whom it is sought to establish as the author of the instrument in question. 1 Greenl. Ev. § 578.

"This is as distinct and separate a thing from that comparison which a witness called to testify to handwriting makes between the writing in question and the exemplar in his mind as an external, visible, and tangible object is distinct from a mental impression or memory." 43 Pa. St. 12.

COMPENSATIO CRIMINIS.

The compensation or set-off of one crime against another. For example, in questions of divorce, where one party claims the divorce on the ground of adultery of his or her companion, the latter may show that the complainant has been guilty of the same offense, and, having himself violated the contract, cannot com-

plain of its violation on the other side. This principle is incorporated in the codes of most civilized nations. See 1 Hagg. Consist. 144; 1 Hagg. Ecc. 714; 2 Paige, Ch. (N. Y.) 108; 2 Dev. & B. (N. C.) 64; Bish. Mar. & Div. §§ 393, 394.

COMPENSATION.

Defined.

That which constitutes or is regarded as an equivalent. Illinois C. R. Co. v. Commissioners, 161 Ill. 251; Chicago & N. W. Ry. Co. v. Cicero, 154 Ill, 662.

That which is given or received as an equivalent, as for services, debt, want, loss or suffering; indemnity; recompense; amends; requital; that which supplies the place of something else, or makes good a deficiency, or makes amends. Matecny v. Vierling, etc., Works, 187 Ill. App. 455.

That which is given as an equivalent for a loss. Alton & S. R. Co. v. Carpenter, 14 Ill. 192.

Indemnification; recompense. Something to be done for or paid to another of equal value with something of which he has been deprived by the act or negligence of the party so doing or paying.

As compared with "consideration" and "damages," "compensation," in its most careful use, seems to be between them. Consideration is amends for something given by consent, or by the owner's choice. Damages is amends exacted from a wrongdoer for a tort. Compensation is amends for something which was taken without the owner's choice, yet without commission of a tort. Thus, one should say, consideration for land sold; compensation for land taken for a railway: damages for a trespass. But such distinctions are not uniform. "Land damages" is a common expression for compensation for lands taken for public use. Abbott.

In a statute providing for compensation for property taken for public use, compensation means an equivalent for the value of the land. 17 N. J. Law, 47.

It is applied to the remuneration of officers, fiduciaries, etc., but is not synonymous with "salary." Kilgore v. People, 76 Ill. 548.

"Salary" Synonymous.

The words "salary" and "compensation," used in section 25 of article 6 of the Constitution of 1870, relating to the salaries of judges and state's attorneys, are used interchangeably, and have the same meaning. Cook v. Healy, 222 Ill. 316.

See Kilgore v. People, 76 Ill. 548.

COMPENSATORY DAMAGES.

Defined.

Those allowed as a recompense for the injury actually received. People v. Schwartz, 151 Ill. App. 193.

Punitive Damages Distinguished.

In law compensatory damages are damages estimated as an equivalent for the injury in contradistinction from punitive, exemplary or vindictive damages, which are awarded by way of punishment and as a deterrent to others. People v. Schwartz, 151 Ill. App. 193.

COMPERUIT AD DIEM.

(Lat. he appeared at the day.) In pleading. A plea in bar to an action of debt on a bail bond. The usual replication to this plea is nul tiel record, that there is not any such record of appearance of the said ———. For forms of this plea, see 5 Wentw. 470; Lilly, Entr. 114; 2 Chit. Pl. 527.

COMPETENT.

Fit; qualified; lawful. Thus, "competent authority" is held to mean lawful authority (8 Pet. [U. S.] 449).

A "competent court," one having jurisdiction. 1 C. P. Div. 176.

COMPETENT EVIDENCE.

An instruction as to the right of the jury to disbelieve the evidence of a witness believed to have testified falsely except as corroborated by other "competent evidence" is not erroneous, as the instruction uses the quoted expression as signifying sufficient or adequate evi-

dence, referring to the effect rather than the legal quality of the evidence, and does not leave it to the jury to determine what is competent evidence. Kelley v. Wilson, 21 Ill. App. 143.

COMPETENT PERSON.

The expression "competent person," used in section 38 of the act of 1897 (J. & A. ¶ 1428), known as the Local Improvement Act, relating to special assessments, means a person free from legal disqualification, and does not refer to the ability or experience of such person, the law having established no standard as to those qualities. Marengo v. Eichler, 245 Ill. 50.

COMPETITION.

The act of seeking or endeavoring to gain at the same time; common strife for the same object. Illinois C. R. Co. v. People, 121 Ill. 317.

A combination by a labor union and its officers and members to injure the business of an employer of labor in order to compel him to surrender to the union his absolute right to manage his own business and employ such labor as he chooses is competition. Barnes v. Typographical Union, 232 Ill. 433.

Not every conflict of temporal interest can be regarded as competition. Scott and Farmer JJ. dissenting opinion Barnes v. Typographical Union, 232 Ill. 439; London, etc., Co. v. Horn, 206 Ill. 501.

COMPLAINANT.

The word "complainant," used in section 1 of the act of 1873, now section 7 of the Practice Act (J. & A. ¶8544), relating to jurisdiction of suits against certain insurance companies, refers to the actor in a chancery suit. Railway, etc., Ass'n v. Robinson, 147 Ill. 151.

COMPLETE.

Where one contracts for the construction of a building under a contract reserving to him certain rights to make alterations in the plans, and before completion of the building sells it to another with an agreement to "complete" the building according to the plans and specifications, which are made part of the contract, the word "complete" refers to the work necessary to finish the building, and not to that already done, and amounts to a waiver of the reserved right of the seller to make alterations as provided in the original contract with those erecting the building. Marx v. Oliver, 246 Ill. 325.

Contract.

Within the meaning of the rule that in order to entitle one to specific performance of a contract to convey land the contract sought to be enforced must be "complete," the word "complete" means containing the terms by the acceptance of which the grantee will become entitled to a conveyance. Hayes v. O'Brien, 149 Ill. 416.

COMPLETION.

Section 7 of the Liens Act (J. & A. ¶7145), providing that a contractor shall not be allowed to enforce his lien against other creditors unless within four months after "completion" he shall bring suit, etc., means, by the word "completion," the completion of the work or the completion of the delivery of the material for which a contractor under the act seeks to enforce his lien against any other creditor under the section, and does not refer to the completion of the contract. W. G. Wood Co. v. Nysewander, 187 Ill. App. 359.

COMPOSITIO ULNARUM ET PER-TICARUM.

The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 Bl. Comm. 275.

COMPOUND INTEREST.

Interest computed upon interest after maturity is compound interest. Leonard v. Villars, 23 Ill. 323; Bowman v. Neely, 32 Ill. App. 362.

COMPOUNDING A CRIME.

An offense consisting of perverting public justice in some way by making a bargain to allow the criminal to escape conviction or showing some favor to him for that purpose. Rieman v. Morrison, 264 Ill. 284.

To merely accept money or property in an amount sufficient to compensate a private injury is not, of itself, to "compound any criminal offense," within the meaning of section 43 of the Criminal Code (J. & A. ¶ 3543).

COMPOUNDING A FELONY.

If money is paid, or agreed to be paid, on an agreement not to prosecute for a larceny or other crime, such an agreement is the compounding of a felony. Henderson v. Palmer, 71 Ill. 583; Bothwell v. Brown, 51 Ill. 236.

The act of a party immediately aggrieved, who agrees with a thief or other felon that he will not prosecute him, on condition that he return to him the goods stolen, or who takes a reward not to prosecute. It is not necessary that the person with whom the composition was made should be guilty of the alleged felony (42 Ohio St. 405; 13 Wend. [N. Y.] 592), nor that the consideration for the compounding was received for the benefit of another (58 Iowa, 151).

COMPRINT.

The surreptitious printing of the copy of another to the intent to make a gain thereby. Strictly, it signifies to print together. There are several old statutes prohibiting this act. Jacob; Cowell.

COMPRIRIGUI.

(Lat.) Step-brothers or step-sisters; children who have one parent, and only one, in common. Calv. Lex.

COMPROMISE.

A compromise implies the yielding of a part of a claim. Mulholland v. Bartlett,

74 Ill. 63; Continental, etc., Bank v. Lantry, etc., Co., 189 Ill. App. 305.

COMPULSORY.

In order to render a payment compulsory, such a pressure must be exerted on the payor as to interfere with the free enjoyment of his rights of person or property, in the sense of depriving him of the exercise of his free will, and the compulsion must furnish the motive for the payment. Illinois, etc., Co. v. Chicago, etc., Co., 234 Ill. 543.

COMPURGATOR.

One of several neighbors of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him on his path. 3 Bl. Comm. 341.

CON.

A Latin word definable as together. Swisher v. Illinois C. R. Co., 182 Ill. 547.

CONCEALMENT.

A "concealment," as the expression is used in insurance policies, is the suppression of a material fact within the knowledge of either party, which the other has not the means of knowing, or is presumed not to know, and is equivalent to a false statement. Chicago & A. R. Co. v. Thompson, 19 Ill. 590. See also Material Fact.

CONCERNING DRAINAGE.

An act "concerning drainage" may include assessments upon lands benefited to pay the expense. Ritchie v. People, 155 Ill. 120.

CONCERT.

Agreement in a design or plan; union formed by mutual communication of opinions and views. Davids v. People, 192 Ill. 196.

CONCESSI.

(Lat. I have granted.) A term formerly used in deeds. It is a word of general extent, and is said to amount to a grant, feoffment, lease, release, and the like. 2 Saund. 96; Co. Litt. 301, 302; Dane, Abr. Index; 5 Whart. (Pa.) 278.

It has been held in a feoffment or fine to imply no warranty. Co. Litt. 384; 4 Coke, 80; Vaughan's Argument in Vaughan, 126; Butler's Note, Co. Litt. 384. But see 1 Freem. 339, 414.

CONCLUSION.

(Lat. con claudere, to shut together.) The close; the end.

In Pleading.

In declarations, that part which follows the statement of the cause of action. In personal or mixed actions, where the object is to recover damages, the conclusion is, properly, to the damage of the plaintiff, etc. Comyn, Dig. "Pleader," c. 84; 10 Coke, 1156.

The form was anciently, in the king's bench, "To the damage of the said A. B., and thereupon he brings suit;" in the exchequer, "To the damage," etc., "whereby he is the less able to satisfy our said lord the king the debts which he owes his said majesty at his exchequer, and therefore he brings his suit." 1 Chit. Pl. 356-358.

In pleas, the conclusion is either to the country,—which must be the case when an issue is tendered, that is whenever the plaintiff's material statements are contradicted,—or by verification, which must be the case when new matter is introduced. Every plea in bar, it is said, must have its proper conclusion.

In Remedies.

An estoppel; a bar; the act of a man by which he has confessed a matter or thing which he can no longer deny. For example, the sheriff is concluded by his return to a writ, and therefore, if upon a capias he return cepi corpus, he cannot afterwards show that he did not arrest the defendant, but is concluded by his return. See Plowd. 276b; 3 Thomas, Co. Litt. 600.

CONCLUSION OF FACT.

An inference drawn from the subordinate or evidentiary facts. Brown v. Aurora, 109 Ill. 167.

CONCLUSION TO THE COUNTRY.

In pleading. The tender of an issue for trial by a jury. When the issue is tendered by the defendant, it is as follows: "And of this the said C. D. puts himself upon the country." When tendered by the plaintiff, the formula is, "And this the said A. B. prays may be inquired of by the country." It is held, however, that there is no material difference between these two modes of expression, and that if the one be substituted for the other the mistake is unimportant. 10 Mod. 166.

CONCRETE SEWER.

A contract for delivery of cement wherein the amount of cement ordered is followed by the words "what job concrete sewer" does not, by the expression "concrete sewer," create an ambiguity as to the amount of cement ordered and is to be treated as merely descriptive and not controlling. V. H. Parke, etc., Co. v. Thompson, 159 Ill. App. 193.

CONCUBINAGE.

A species of marriage which took place among the ancients, and which is yet in use in some countries. See "Concubinatus." The act or practice of cohabiting, in sexual commerce, without the authority of law or a legal marriage. See 1 Brown, Civ. Law, 80; Merlin, Report.; Dig. 32. 49. 4; Dig. 7. 1. 1; Code, 5. 27. 12.

The word "concubinage," used in section 1 of division 1 of the Criminal Code (J. & A. ¶3484), relating to abduction, is used in its ordinary and popular signification, and is not a word of art or a

technical term. Henderson v. People, 124 Ill. 615.

CONCUBINATUS.

A natural marriage, as contradistinguished from the justae nuptiae, or justum matrimonium, the civil marriage.

The concubinatus was the only marriage which those who did not enjoy the jus connubii could contract. Although this natural marriage was authorized and regulated by law, yet it produced none of those important rights which flowed from the civil marriage, such as the paternal power, etc.; nor was the wife entitled to the honorable appellation of mater-familias, but was designated by the name of concubina. After the exclusive and aristocratic rules relative to the connubium had been relaxed, the concubinatus fell into disrepute and the law permitting it was repealed by a constitution of the Emperor Leo, the Philosopher, in the year 886 of the Christian era.

CONCUBINE.

When a single woman consents to unlawfully cohabit with a man generally, as though the marriage relation existed between them, without any limit as to the duration of such illicit intercourse, and actually commences cohabiting with him in pursuance of that understanding, she becomes his concubine. Henderson v. People, 124 Ill. 616.

CONCURRENT INSURANCE.

A policy of fire insurance permitting a named amount of "concurrent insurance" means, by the quoted expression, insurance running with the policy in question, in addition to and not including such policy. Parkhurst-Davis Co. v. Merchants Underwriters, 237 Ill. 497.

CONCURRENT JURISDICTION.

That which is possessed over the same parties or subject matter at the same time by two or more separate tribunals. Magruder, J., dissenting opinion, Farwell v. Crandall, 120 Ill. 81.

That jurisdiction exercised by different courts at the same time over the same subject matter and within the same territory, and wherein litigants may, in the first instance, resort to either court indifferently. Hercules, etc., Works v. Elgin, J. & E. Ry. Co., 141 Ill. 498.

CONDEMNATION SUIT.

A suit to recover a judgment for the amount of compensation and damages which the owner of private property has sustained by reason of the taking of his property for a public use. Brueggemann v. Young, 208 Ill. 186.

CONDITION.

In Civil Law.

The situation of every person in some one of the different orders of persons which compose the general order of society, and allot to each person therein a distinct, separate rank. Domat, Civ. Law, tom. ii. lib. 1, tit. 9, § i. art. viii.

In Common Law.

The status or relative situation of a person in the state of arising from the regulations of society. Thus, a person under twenty-one is an infant, with certain privileges and disabilities. Every person is bound to know the condition of the person with whom he deals.

A qualification, restriction, or limitation modifying or destroying the original act with which it is connected.

A clause in a contract or agreement intended to suspend, rescind, or modify the principal obligation, or, in case of a will, to suspend, revoke, or modify the devise or bequest. 1 Bouv. Inst. note 730.

A modus or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate, etc., may either be defeated, enlarged, or created upon an uncertain event. Co. Litt. 201a.

A qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. Greenl. Cruise, Dig. tit. xiii. c. i. § 1.

- A future uncertain event, on the happening or the nonhappening of which the accomplishment, modification, or rescission of a testamentary disposition is made to depend.
- (1) Affirmative conditions are positive conditions. Affirmative conditions implying a negative are spoken of by the older writers, but no such class is now recognized. Shep. Touch. 117.
- (2) Collateral conditions are those which require the doing of a collateral act. Shep. Touch. 117.
- (3) Compulsory conditions are such as expressly require a thing to be done.
- (4) Repugnant or insensible conditions are those inconsistent with the original act.
- (5) Consistent conditions are those which agree with the other parts of the transaction.
- (6) Copulative conditions are those which are composed of distinct parts or separate conditions, all of which must be performed. They are generally conditions precedent, but may be subsequent. Powell, Dev. c. 15.
- (7) Disjunctive conditions are those which require the doing of one of several things. If a condition become impossible in the copulative, it may be taken in the disjunctive. Viner, Abr. "Condition" (S b) (Y b 2).
- (8) Single conditions are those which require the doing of a single act only.
- (9) Restrictive conditions are such as contain a restraint, as that a lessee shall not alien.
- (10) Lawful conditions are those which the law allows to be made.
- (11) Unlawful conditions are those which the law forbids.
- (12) Independent conditions are those, each of which must be performed without regard to the performance of the others.
- (13) Dependent conditions are those the failure of performance of one of which excuses performance of the others.
- (14) Express conditions are those which are created by express words. Co.

Litt. 328. Express conditions are also known as "conditions in deed."

- (15) Implied conditions are those which the law supposes the parties to have had in mind at the time the transaction was entered into, though no condition was expressed. Implied conditions are also known as "covert conditions," or "conditions in law," but the latter term is little used by modern writers. 2 Bl. Comm. 155.
- (16) Impossible conditions are those which cannot be performed in the course of nature.
- (17) Possible conditions are those which may be performed.
- (18) Inherent conditions are such as are annexed to the rent reserved out of the land whereof the estate is made. Shep. Touch. 118.
- (19) Precedent conditions are those which are to be performed before the estate or the obligation commences, or the bequest takes effect. Powell, Dev. c. 15. A bond to convey land on the payment of the purchase money furnishes a common example of a condition precedent. 9 Cush. (Mass.) 95. They are distinguished from conditions subsequent.
- (20) Subsequent conditions are those whose effect is not produced until after the vesting of the estate or bequest, or the commencement of the obligation.

"Where a condition must be performed before the estate can commence, it is called a 'condition precedent;' but when the effect of the condition is to enlarge or defeat the estate already created, it is then called a 'condition subsequent.'" 12 Barb. (N. Y.) 440.

A condition subsequent determines an estate after breach upon entry or claim by the proper person; as, limitation marks the period which ipso facto determines an estate. 3 Gray (Mass.) 143.

Estate.

Chancellor Kent says: "Estates upon condition are such as have a qualification annexed to them, by which they may, upon the happening of a particular event, be created or enlarged or destroyed;" (4 Kent's Com. 14th ed.—122;) that they may be either precedent or subse-

quent; that "subsequent conditions are those which operate upon estates already created and vested and render them liable to be defeated;" (Ibid. 126;) and that "if the condition subsequent be followed by a limitation over to a third person in case the condition be not fulfilled or there be a breach of it, that is termed a conditional limitation." (Ibid. 127.) The words of limitation mark the period which is to determine the estate, and the words of condition denote the circumstances or contingency that is liable to defeat the estate in the intermediate time.

The distinction between an estate upon condition subsequent and upon conditional limitation is this: An estate upon condition subsequent does not divest the donor of his reversionary interest, which by the terms of the gift or devise is reserved to the donor to re-invest in him or his heirs upon breach of the condition, while a gift or devise upon conditional limitation divests the donor of his reversionary interest at once and vests it in the third party in whom it is to vest upon the happening of the contingency that is to defeat and terminate the intermediate estate. Another important distinction is, that a breach of condition, alone, will not defeat the former estate without a declaration of forfeiture by the donor or his heirs and a re-entry by them, while in the latter case a breach of condition, alone, will defeat the estate and ipso facto vest it in the third party. the one case nobody but the donor or his heirs can take advantage of the breach and a third party cannot; in the other, no one but the third party can take advantage of the breach and the donor or his heirs cannot. 4 Kent's Com. 127; Battle Square Church v. Grant, 3 Gray 142: Mott v. Danville Seminary, 129 Ill. 415; North v. Graham, 235 Ill. 183; Green v. Old People's Home, 269 Ill. 143, 144.

Deed.

A condition in a deed is a qualification of the estate granted. Nowak v. Dombrowski, 267 Ill. 106; Phillips v. Gannon, 246 Ill. 103.

CONDITION PRECEDENT.

Defined.

Such as must happen before the estate dependent upon them can arise or be enlarged. Nowak v. Dombrowski, 267 Ill. 106.

One which must be performed before the interest affected by it can vest. Goff v. Pensenhafer, 190 Ill. 207.

"Condition Subsequent" Compared.

If the language of the particular clause or the whole instrument shows that the act upon which the estate depends must be performed before the estate vests, the condition is precedent, but if the act does not necessarily precede the vesting of the estate but may accompany or follow it, the condition is subsequent. Nowak v. Dombrowski, 267 Ill. 107.

Devise Contingent Upon Divorce.

A condition in a will giving a devisee the fee of real estate in case he is divorced from his then wife is a condition precedent. Ransdell v. Boston, 172 Ill. 447.

Insurance.

A warranty in an insurance policy is in the nature of a condition precedent. Spence v. Central, etc., Co., 236 Ill. 447; Mutual, etc. Co. v. Robertson 59 Ill. 126.

CONDITION SUBSEQUENT.

Defined.

Such as, when they do happen, defeat an estate already vested. Nowak v. Dombrowski, 267 Ill. 106.

One, by which an interest already vested may be divested, or a contingent interest defeated before vested. Goff v. Pensenhafer. 190 Ill. 207.

Provisions in a deed giving the grantor, by express words or necessary implication, the right to re-enter the premises on violation of the condition. Koch v. Streuter, 232 Ill. 596.

Condition Precedent Compared.

Conditions subsequent are to be distinguished from conditions precedent in that the former operate on estates already vested, while the latter intervene and prevent the vesting till the condition is complied with. Koch v. Streuter, 232 Ill. 597.

No technical or precise words are used to distinguish a condition precedent from a condition subsequent, and the same words may create either, according to the rules of construction and the intent of the parties. Nowak v. Dombrowski, 267 Ill. 107. To a similar effect see Koch v. Streuter, 232 Ill. 597.

CONDITIONAL.

An express promise by the debtor to "pay every cent" he owed the payee of the note, is not rendered conditional by statements making excuses for delay and expressing inability to pay at present and the necessity for giving other debts the preference. Walker v. Freeman, 209 Ill. 22.

CONDITIONAL FEE.

At common law a conditional fee was an estate created by a conveyance to one and his heirs, either generally or specially, which was held to be performed and the fee vested on the birth of issue, the condition being annexed that if the donee die without heirs, the land should revert to the donor. Frazer v. Peoria County, 74 Ill. 286.

A fee which, at the common law, was restrained to some particular heirs, exclusive of others. It was called a conditional fee by reason of the condition, expressed or implied in the donation of it, that, if the donee died without such particular heirs, the land should revert to the donor. For this was a condition annexed by law to all grants whatsoever, that, on failure of the heirs specified in the grant, the grant should be at an end, and the land return to its ancient proprietor. 2 Bl. Comm. 110.

CONDITIONAL LEGACY.

A bequest whose existence depends upon the happening or not happening of



some uncertain event, by which it is either to take place or to be defeated. 1 Rop. Leg. (3rd Ed.) 645.

CONDITIONAL LIMITATION.

A condition followed by a limitation over to a third person in case the condition be not fulfilled or there be a breach of it. A condition determines an estate after breach, upon entry or claim by the proper person. A limitation marks the period which determines an estate without any act on the part of him who has the next expectant interest. A conditional limitation is therefore of a mixed nature, partaking of that of a condition and a limitation. Bigelow, J., 3 Gray (Mass.) 143. The limitation over need not be to a stranger. 2 Bl. Comm. 155; 11 Metc. (Mass. 102; Watk. Conv. 204).

It is distinguished from an estate on condition subsequent by the fact that, on breach of a conditional limitation, the estate terminates ipso facto. 1 Steph. Comm. 310.

CONDITIONAL SALE.

Chattel Mortgage Excluded.

A chattel mortgage is not a conditional sale. Gary, J., dissenting opinion, Frankenthal v. Meyer, 55 Ill. App. 416.

Designation as Lease.

A transaction whereby a person on taking a piano agreed to pay fifty dollars for each of thirteen months in addition to fifty dollars paid on delivery of the piano, the piano to become the property of the purchaser on making the last payment, is a conditional sale as between the vendor and creditors of the vendee, although the transaction is between the parties called a lease, and the monthly payments called rent, so as to preserve a lien on the piano in the vendor. Murch v. Wright, 46 Ill. 488.

CONDONATION.

Condonation is forgiveness upon condition that the injury shall not be repeated. Dorse v. Dorse, 198 Ill. App. 387.

Conditional forgiveness, whereby one party forgives the other's wrong on the implied promise that there shall be no further violation of the marriage vows. Rupp v. Rupp, 59 Ill. App. 571.

The forgiveness of misconduct constituting a cause for divorce upon the condition that the offender will not in future be guilty of such misconduct. Truitt v. Truitt, 154 Ill. App. 245.

Forgiveness by the injured party of an antecedent matrimenial offense, upon condition the guilty party will not repeat the offense, and is dependent upon future good usage and conjugal kindness. Abbott v. Abbott, 192 Ill. 441; Sharp v. Sharp, 116 Ill. 517; Farnham v. Farnham, 73 Ill. 500; Mattes v. Mattes, 121 Ill. App. 401; Moorehouse v. Moorehouse, 90 Ill. App. 403; Wessels v. Wessels, 28 Ill. App. 258. To the same effect see Davis v. Davis, 19 Ill. 338.

CONDUCTED.

Section 27 of the Act of 1885, known as the Farm Drainage Act, which section was repealed in 1901, providing for appeals to the county court from a tax levied under the act, and also providing that the trial of the appeal shall be "conducted as in other cases of appeals," includes, by the word "conducted," a jury trial and all other steps leading to the rendition of a judgment, the trial being "conducted," within the meaning of the statute, by means or through the instrumentality of both judge and jury, each performing, properly, a function of the court in the trial. Mascall v. Commissioners, 122 Ill. 622.

CONDUCTED AND DROVE.

In an action to recover for injuries to plaintiff's horse and wagon sustained as a result of a collision with a horse and wagon alleged to have been owned and driven by defendants, a statement in defendant's affidavit of defense that defendants "conducted and drove" their horse with due care amounts to an admission that the horse was in the posses-

sion and control of defendants. Marx v. Chicago, etc., Co., 194 Ill. App. 324.

CONDUCTIO.

(Lat.) A hiring; a bailment for hire. It is the correlative of locatio, a letting for hire. Conducti actio, in the civil law, is an action which the hirer of a thing or his heir had against the latter or his heir to be allowed to use the thing hired. Conducere, to hire a thing. Conductor, a hirer, a carrier; one who undertakes to perform labor on another's property for a specified sum. Conductus, the thing hired. Caiv. Lex.; Du Cange; 2 Kent, Comm., 586.

CONDUCTOR.

An inclined chute or tube, used for the purpose of transferring grain from the elevator to boats at the wharf. Peoria & P. U. Ry. Co. v. Peoria & F. Ry. Co., 105 Ill. 120.

CONFESSION.

A voluntary acknowledgment of guilt. Johnson v. People, 197 Ill. 51.

A voluntary acknowledgment of a person charged with the commission of a crime that he is guilty of the offense. Michaels v. People, 208 Ill. 607.

A voluntary admission or declaration by a person of his agency or participation in a crime; an acknowledgment of guilt, and not of facts criminating in their nature. Michaels v. People, 208 Ill. 607; Johnson v. People, 197 Ill. 51.

The term "confession" is limited to the criminal act, and does not include statements, declarations or admissions of facts incriminating in their nature or tending to prove guilt. Michaels v. People, 208 III. 607.

CONFESSION AND AVOIDANCE.

In pleading. The admission in a pleading of the truth of the facts as stated in the pleading to which it is an answer, and the allegation of new and related matter of fact which destroys the legal effect of the facts so admitted. The plea and any of the subsequent pleadings may be by way of confession and avoidance, or, which is the same thing, "in" confession and avoidance. Pleadings in confession and avoidance must give color. See "Color;" 1 East, 212. They must admit the material facts of the opponent's pleading, either expressly in terms (Dyer, 171b), or in effect. They must conclude with a verification. 1 Saund. 103, note. For the form of statement, see Steph. Pl. 72, 79.

CONFIDENCE GAME.

A method of swindling. People v. Bertsche, 265 Ill. 283.

A kind of swindle, practiced usually in large cities, upon unwary strangers. Du-Bois v. People, 200 Ill. 161.

Any swindling operation in which advantage is taken of the confidence reposed by the victim in the swindler. People v. Warfield, 261 Ill. 322; People v. Weil, 243 Ill. 216; People v. Talmage, 233 Ill. 563; People v. Turpin, 233 Ill. 457; People v. Depew, 237 Ill. 579; Chilson v. People, 224 Ill. 540; Juretich v. People, 223 Ill. 486; Hughes v. People, 223 Ill. 421; Dubois v. People, 200 Ill. 161; Maxwell v. People, 158 Ill. 256; People v. Warfield, 172 Ill. App. 34. To the same effect see People v. Keyes, 269 Ill. 180; People v. Poindexter, 243 Ill. 74.

In Form of Contract.

A "confidence game" is none the less such because made to assume the form of an ordinary business transaction. People v. Keyes, 269 Ill. 180; People v. Depew, 237 Ill. 579; Chilson v. People, 224 Ill. 539; Hughes v. People, 223 Ill. 421.

Betting on Dice.

Inducing men to bet on the top and bottom of dice and procuring money from a man for that purpose, thereby getting possession of his pocketbook, is a "confidence game" within the meaning of section 98 of the Criminal Code (J. & A. q 3655). Van Eyck v. People, 178 III. 201.

Indictment.

An indictment charging a violation of section 98 of division 1 of the Criminal Code, relating to defrauding by means of the "confidence game," is sufficient if alleging that defendant, at a certain time or place, unlawfully and feloniously obtain or attempted to obtain money or property of another by means of the confidence game, leaving it to be proved what was the nature of the devices resorted to. People v. Clark, 256 Ill. 24; Morton v. People, 47 Ill. 474.

CONFISCATE.

To appropriate to the use of the state. Especially used of the goods and property of alien enemies found in a state in time of war. 1 Kent, Comm. 52 et seq. Bona confiscata and forisfacta are said to be the same (1 Bl. Comm. 299), and the result to the individual is the same whether the property be forfeited or confiscated; but, as distinguished, an individual forfeits, a state confiscates, goods or other property. Used also as an adjective,—forfeited. 1 Bl. Comm. 299.

Confiscation is to be distinguished from a proceeding in prize. "Confiscation is the act of the sovereign against a rebellious subject; condemnation as prize is the act of a belligerent against another belligerent." 14 Ct. Cl. Rep. 48.

CONFLICTING.

All adverse titles are "conflicting," within the meaning of section 39 of the Partition Act (J. & A. ¶8352), providing that in partition proceedings the court may, inter alia, investigate all question of "conflicting or controverted titles." Hurlbut v. Talbot, 273 Ill. 365; Gage v. Reid, 104 Ill. 513.

CONFUSION OF GOODS.

The intermixture of the goods of two persons, so that the several portions can be no longer distinguished. 2 Bl. Comm. 405. The term, and, in a great degree, the doctrine, are borrowed from the confusio of the civil law. The meaning of the former, however, has been so far

modified as to include not only the intermixture or interfusion of liquids and metals (the confusio proper of the civil law), but also that of dry articles (properly expressed in the same law by the term commixtio). The doctrines, also, of the two systems so far differ that, while the civil law allows a party who willfully intermixes his property with that of another, without his approbation or consent, a satisfaction for what he has so improvidently lost, the common law allows him nothing, but gives the entire property to the other party. 2 Bl. Comm. 405; Inst. 2. 1. 28; 2 Steph. Comm. 85; 2 Kent, Comm. 364; U. S. Dig. It is the admixture of goods of the same kind, as distinguished from "accession," which is the union of materials of different kinds.

Blackstone says: "But in the case of confusion of goods, where those of two persons are so intermixed that the several portions can be no longer distinguished, the English law partly agrees with and partly differs from the civil. If the intermixture be by consent, I apprehend that, in both laws, the proprietors have an interest in common, in proportion to their respective shares. But if one wilfully intermixes his money, corn or hay with that of another man, without his approbation or knowledge, or casts gold, in like manner, into another's melting pot or crucible, the civil law, though it gives the sole property of the whole to him who has interfered in the mixture, yet allows a satisfaction to the other for what he has so improvidently lost. But our law, to guard against fraud, gives the entire property, without any account, to him whose original dominion is invaded, and endeavored to be rendered uncertain, without his own consent." Beach et al. v. Schmultz, 20 Ill. 190, 191.

The doctrine of confusion of goods only applies when there is such an unauthorized intermixture as prevents the line of distinction from being traced, and the rule is carried no further than necessity requires. Reiss v. Hanchett, 141 Ill. 429; Diversey v. Johnson, 93 Ill. 569. To a similar effect see Beach v. Schmultz, 20 Ill. 190.

CONFUSION OF RIGHTS.

A union of the qualities of debtor and creditor in the same person. The effect of such a union is generally to extinguish the debt. 1 Salk. 306; Cro. Car. 551; 1 Ld. Raym. 515. See 5 Term R. 381; Comyn, Dig. "Baron et Feme" (D).

CONGLOMERATE.

Rock formed by the cementing together of gravel stones and boulders by argillaceous and silicious cement, making it rock; a homogeneous mass so that, when it breaks, it does not separate the pebbles but breaks as one mass. Rock composed of particles of pre-existent rocks cemented together, so as to make a uniformly solid substance. Chicago v. McKechney, 205 Ill. 432.

CONGREGATION.

The members of a particular church who meet in one place for worship. In re Walker, 200 Ill. 574.

The word "congregation," used in section 2 of the Revenue Act of 1874, relating to property exempted from taxation, does not include persons meeting annually on the grounds of a camp meeting association. People v. Watseka, etc., Ass'n, 160 Ill. 579.

CONJECTURE.

A slight degree of credence, arising from evidence too weak or too remote to cause belief. 1 Mascardus de Prob. quaest. 14, note 14.

CONJOINTS.

Persons married to each other. Story, Confl. Laws, § 71. Wolff. Dr. Nat. § 858.

CONNECTION.

To constitute a "connection," within the meaning of section 58 of the Act of 1879 (J. & A. ¶ 4439), known as the Levee Act, providing that owners making "connection" with a main ditch, etc., shall be deemed to have made voluntary application to be included in the drainage district, it is not required that each landowner should dig a ditch from his land to the ditches in the district, but it is enough if an owner of land adjoining a district makes a ditch leading from his land to and draining the water therefrom into the district ditch, and other landowners construct ditches on their lands connecting therewith, so as to form a continuous line through which the waters from said lands are drained into the district ditches. Gar Creek, etc., District v. Wagner, 256 Ill. 343.

CONNECTED TITLE.

The expression "connected title," used in section 2 of the Act of 1835, now section 4 of the Limitations Act (J. & A. ¶ 7199), relating to the effect of seven years' residence on land under record title, includes a title under an auditor's deed given in pursuance of a tax sale. Irving v. Brownell, 11 Ill. 414.

CONNIVANCE.

An agreement or consent, indirectly given, that something unlawful shall be done by another.

A married party's corrupt consenting to evil conduct, of which afterwards he complains. 2 Bish. Mar. & Div. § 203.

Connivance differs from condonation, though the same legal consequences may attend it. Connivance necessarily involves criminality on the part of the individual who connives; condonation may take place without imputing the slightest blame to the party who forgives the injury. Connivance must be the act of the mind before the offense has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. 3 Hagg. Ecc. 350.

An error of judgment not involving a willingness to have the delinquency committed is not connivance. 10 Jur. 829.

Nor is a watching of the guilty parties, without interference. 109 Mass. 408.

CONQUEST.

(Lat. conquiro, to seek for.) Purchase; any means of obtaining an estate out of the usual course of inheritance. The estate itself so acquired. According to Blackstone and Sir Henry Spelman, the word in its original meaning was entirely dissociated from any connection with the modern idea of military subjugation, but was used solely in the sense of purchase.

CONSANGUINITY.

(Lat. consanguis, blood together.) The relation subsisting among all the different persons descending from the same stock or common ancestor.

The relation subsisting among persons who descend from the same common ancestor, but not one from the other. It is essential, to constitute this relation, that they sprang from the same common root or stock, but in different branches. mode of computing degrees of collateral consanguinity at the common and by the canon law is to discover the common ancestor, to begin with him to reckon downwards, and the degree the two persons, or the more remote of them, is distant from the ancestor, is the degree of kindred subsisting between them. For instance, two brothers are related to each other in the first degree, because from the father to each of them is one degree. An uncle and a nephew are related to each other in the second degree, because the nephew is two degrees distant from the common ancestor; and the rule of computation is extended to the remotest degrees of collateral relationship.

The method of computing the civil law is to begin at either of the persons in question, and count up to the common ancestor, and then downwards to the other person, calling it a degree for each person, both ascending and descending, and the degrees they stand from each other is the degree in which they stand related. Thus, from a nephew to his father is one degree; to the grandfather, two degrees; and then to the uncle, three; which points out the relationship.

The mode of the civil law is preferable,

for it points out the actual degree of kindred in all cases. By the mode adopted by the common law, different relations may stand in the same degree. The uncle and nephew stand related in the second degree by the common law, and so are two first cousins, or two sons of two brothers; but by the civil law the uncle and nephew are in the third degree, and the cousins are in the fourth. The mode of computation, however, is immaterial, for both will establish the same person to be the heir. 2 Bl. Comm. 202.

Lineal Consanguinity.

That relation which exists among persons where one is descended from the other, as between the son and the father, or the grandfather, and so upwards in a direct ascending line, and between the father and the son, or the grandson, and so downwards in a direct descending line.

In computing the degree of lineal consanguinity existing between two persons, every generation in the direct course of relationship between the two parties makes a degree, and the rule is the same by the canon, civil, and common law.

CONSCIENCE.

Internal or self knowledge or judgment of right or wrong. It is not identical with "principle." An "objection on principle" to the death penalty is not the same as a conscientious scruple. 7 Cal. 140.

CONSECUTIVELY.

A provision in a judgment that the jail sentences on several counts shall run consecutively means that they shall run successively. People v. Elliott, 272 Ill. 603.

CONSENT.

(Lat. con, with, together; sentire, to feel.) A concurrence of wills. Express consent is that directly given, either viva voce or in writing. Implied consent is that manifested by signs, actions, or facts, or by inaction or silence, which raise a

presumption that the consent has been Consent supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. Fonbl. Eq. bk. 1, c. 2, § 1.

Involves Act of Reason.

"Consent" involves an act of reason, and when one is bereft of reason it follows there can be no consent given that comes from reflection. United Workmen v. Zuhlke, 129 Ill. 307; Bradford v. Abend, 89 Ill. 81.

Venue Act.

One of several defendants does not "consent" to the allowance of a petition for a change of venue, within the meaning of section 9 of the Venue Act (J. & A. ¶ 11495), where he at first gives his consent and later, before action on the petition, withdraws his consent and files a written protest against its allowance. Schmidt v. Mitchell, 84 Ill. 196.

CONSENT DECREE.

A decree based upon the consent and agreement of the parties. People v. Spring Lake District, 253 Ill. 491.

A decree based upon the consent or agreement of the parties, which may supersede both pleading and evidence and even go to the length of pointing out and limiting the relief to be granted. People v. Spring Lake District, 253 Ill. 491.

"A consent degree is not, in a strict legal sense 'a judicial sentence,' but it is in the nature of a solemn contract and which cannot be amended or in any way varied, without the like consent, or reheard in the court that rendered it, appealed from, or reversed upon a writ of error or bill for review. Krieger v. Krieger, 120 Ill. App. 645; The Fair v. Chicago, 135 Ill. App. 266. To the same effect see First, etc., Bank v. Illinois, etc., Co., 174 Ill. 154; Cox v. Lynn, 138 Ill. 204; Armstrong v. Cooper, 11 Ill. 542.

CONSENTING.

There is a plain distinction between consenting to a crime and aiding, abetting or assisting in its perpetration, aiding. | Hoopeston v. Eads, 32 Ill. App. 78.

abetting or assisting being affirmative in their character, while consenting may be a mere negative acquiescence not in any way made known at the time to the principal malefactor. People v. Novick, 265 Ill. 443; Jones v. People, 166 Ill. 269.

CONSEQUENCE.

That which follows something on which it depends; that which is produced by a cause; connection of cause and effect; that which follows from, or grows out of any act, cause or series of actions; an event or effect produced by some preceding influence, action, act or cause. Whiteside v. O'Connors, 162 Ill. App. 113.

CONSEQUENTIAL CONTEMPT.

Contempts which without gross insolence or direct opposition plainly tend to create a universal disregard of the authority of the courts. Kyle v. People, 72 Ill. App. 176.

CONSERVATOR OF THE PEACE.

He who hath an especial charge, by virtue of his office, to see that the king's peace be kept.

Before the reign of Edward III., who created justices of the peace, there were sundry persons interested to keep the peace, of whom there were two classes; one of which had the power annexed to the office which they held; the other had it merely by itself, and were hence called "conservators of the "wardens" or peace." Lambard, Eiren. lib. 1, c. 3. This latter sort are superseded by the modern justices of the peace. 1 Bl. Comm. 349.

The judges and other similar officers of the various states, and also of the United States, are conservators of the public peace, being entitled "to hold to the security of the peace and during good behavior." 1 Sharswood, Bl. Comm. 349.

CONSIDERABLE TIME.

"A considerable time" is too indefinite an expression to be used in instructions.



CONSIDERATION.

A consideration may consist of a benefit to the promisor or of a detriment to the promisee. Richelieu, etc., Co. v. International, etc., Co., 140 Ill. 264.

(Law Lat. consideratio.) The material cause which moves a contracting party t) enter into a contract. 2 Bl. Comm. 443.

The price, motive, or matter of inducement to a contract,--whether it be the compensation which is paid, or the inconvenience which is suffered by the party from whom it proceeds. A compensation or equivalent. A cause or occasion meritorious, requiring mutual recompense in deed or in law. Abr. "Consideration" (A).

The quid pro quo, that which the party to whom a promise is made does or agrees to do in exchange therefor. 120 U. S. 197.

"The motive for entering into a contract, and the consideration of the contract, are not the same. Nothing is consideration that is not regarded as such by both parties. It is the price voluntarily paid for the promisor's undertaking. Expectation of results will not constitute a consideration." Beach, Cont. § 147.

CONSIDERED AS SEIZED ON EXECUTION.

When an officer having a valid execution against a stockholder of record of a corporation exhibits such execution and delivers a copy thereof to the proper officer and receives his certificate as provided in section 56 of the Judgments, Decrees and Executions Act (J. & A. ¶6803), the stock is "considered as seized on execution," within the meaning of section 53 of the same act (J. & A. ¶ 6800), although the copy of the execution delivered by the officer is attested by no one except himself, and although he did not sign the attestation clause on such copy. People v. Goss, etc., Co., 99 III. 364.

CONSIGN.

To deposit with another to be sold, disposed of or cared for, as merchandise | light" on the rear car or engine is not

or movable property; to send goods to an agent, commission merchant, correspondent or factor, to be sold, stored, etc. F. F. Ide, etc., Co. v. Sager, etc., Co., 82 Ill. App. 687.

CONSOLATO DEL MARE.

A code of sea laws, compiled by order of the ancient kings of Arragon. It comprised the ancient ordinances of the Greek and Roman emperors, and of the kings of France and Spain, and the laws of the Mediterranean islands and of Venice and Genoa. It was originally written in the dialect of Catalonia, as its title indicates, and it has been translated into every language of Europe. This code has been reprinted in the second volume of the Collection de Lois Maritimes Anterieures au XVIII Siecle, par J. M. Pardessus, Paris, 1831,-a collection of sea laws which is very complete. See, also, Riddu's Hist. Mar. Comm. 171; Marvin, Leg. Bibl.

CONSOLIDATION.

There appears to be a distinction between "merger," strictly speaking, and a "consolidation," the terms being not always used with strict accuracy, and where an agreement employs both terms. the true intent of the agreement is not to be determined by recourse to the dictionaries but by the context. Chicago & E. I. R. Co. v. Doyle, 256 Ill. 522.

CONSORTIUM.

Scope of Term.

Under the term "consortium," as applied to the relations of husband and wife, are included the person's affections. society and aid. Betser v. Betser, 186 Ill. 539.

CONSPICUOUS LIGHT.

A city ordinance requiring that backing trains shall have a "conspicuous complied with by showing an ordinary brakeman's lantern on top of a freight car. Chicago, M. & St. P. Ry. Co. v. Walsh, 157 Ill. 677.

CONSPIRACY.

Defined.

A combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose; or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. Spies v. People, 122 Ill. 212; Heaps v. Dunham, 95 Ill. 586; Smith v. People, 25 Ill. 11; People v. Warfield, 172 Ill. App. 40; Breitenberger v. Schmidt, 38 Ill. App. 177; Franklin Union v. People, 220 Ill. 376; People v. Curran, 207 Ill. App. 281.

A conspiracy is a combination of two or more persons for the purpose of accomplishing a criminal or unlawful act or an object either criminal or unlawful by unlawful means, or a combination of two or more persons to do something unlawful as a means to an ultimate end. Przybylski v. Remus, 207 Ill. App. 106.

Combination to Do Lawful Act Included.

A combination may amount to a conspiracy although its object be to do an act which, if done by an individual, would not be unlawful. Franklin Union v. People, 220 Ill. 376; Chicago, etc., Co. v. People, 214 Ill. 440; Smith v. People, 25 Ill. 14.

Combination Need Not Be Written.

The agreement or combination, to be a conspiracy, need not be in writing, but may be a verbal agreement or undertaking, or a scheme evidenced by the action of the parties. Franklin Union v. People, 220 Ill. 376; Chicago, etc., Co. v. People, 214 Ill. 453; Harding v. American, etc., Co., 182 Ill. 617.

Gravamen.

The gravamen of the offense is the combination. Franklin Union v. People, 220 Ill. 377.

Essence Is Intent.

The essence of the crime of conspiracy is the intent and the agreement, and unlawful acts of individuals, no matter how numerous, cannot be called a conspiracy, unless it appears that the minds of the persons committing such acts had previously met and agreed upon a common purpose contemplating something unlawful, either as the final object of the agreement or as a means of accomplishing it. Johnson v. People, 124 Ill. App. 227. To the same effect see Ochs v. People, 124 Ill. 422; Batman v. Cook, 120 Ill. App. 205; O'Donnell v. People, 41 Ill. App. 25 (quoting Greenleaf, Evidence).

In Civil Actions.

The essence of a conspiracy, so far as it justifies a civil action for damages, is a concert or combination to defraud, or to cause other injury to persons or property, which because of acta done in pursuance of such conspiracy, actually results in damage to the person or property of the person injured or defrauded. Doremus v. Hennessy, 62 Ill. App. 402.

Combination to Prevent Competition.

A combination between independent producers of coal to prevent competition in its sale is inimical to trade and commerce, detrimental to the public and unlawful, and amounts to a common law conspiracy, regardless of what may be done in furtherance of the conspiracy. Chicago v. People, 214 Ill. 441.

Criminal Conspiracy.

As soon as the union of wills for the unlawful purpose is perfected, the offense of conspiracy is complete. Spies v. People, 122 Ill. 213.

To authorize a conviction for conspiracy, there must be proved to have been more than one person guilty. And "it needs something more than proof of a mere passive cognizance or fraudulent or illegal action of others, to sustain conspiracy. There must be something showing active participation of some kind by the parties charged." (Citing 2 Whar-

ton's Crim. Law, (7th ed.) ¶ 2355,) Evans v. People, 90 III. 389.

CONSPIRE.

To conspire, comprehends any confederacy to prejudice a third person, as where divers confederate to impoverish another. Mott v. Danforth, 6 Watts 304; Doremus v. Hennessy, 62 Ill. App. 407.

CONSTABLE.

An officer whose duty it is to keep the peace in the district which is assigned to him. The most satisfactory derivation of the term and history of the origin of this office is that which deduces it from the French comestable (Lat. comes-stabuli), who was an officer second only to the king. He might take charge of the army, wherever it was, if the king were not present, and had the general control of everything relating to military matters, as the marching troops, their encampment, provisioning, etc. Guyot, Rep. Univ.

The same extensive duties pertained to the constable of Scotland. Bell, Dict.

The duties of this officer in England seem to have been first duly defined by St. Westminster (13 Edw. I.), and question has been frequently made whether the office existed in England before that time. 1 Bl. Comm. 356. It seems, however, to be pretty certain that the office in England is of Norman origin, being introduced by William, and that subsequently the duties of the Saxon tithing men, borsholders, etc., were added to its other functions. See Cowell; Willcock, Const.; 1 Bl. Comm. 356.

High constables were first ordained, according to Blackstone, by the statute of Westminster, though they were known as efficient public officers long before that time. 1 Sharswood, Bl. Comm. 356. They are to be appointed for each franchise or hundred by the leet, or, in default of such appointment, by the justices at quarter sessions. Their first duty is that of keeping the king's peace. In addition, they are to serve warrants, return lists of jurors, and perform various other

services enumerated in Coke, 4th Inst. 267; 3 Steph. Comm. 47; Jacob, Law Dict. In some cities and towns in the United States there are officers called "high constables," who are the principal police officers in their jurisdiction.

Petty constables are inferior officers in every town or parish, subordinate to the high constable. They perform the duties of head borough, tithing man, or borsholder, and, in addition, their more modern duties appertaining to the keeping the peace within their town, village, or tithing.

In England, however, their duties have been much restricted by Act 5 & 6 Vict. c. 109, which deprives them of their power as conservators of the peace. 3 Steph. Comm. 47.

In the United States, generally, petty constables only are retained, their duties being generally the same as those of constables in England prior to 5 & 6 Vict. c. 109, including a limited judicial power as conservators of the peace, a ministerial power for the service of writs, etc., and some other duties not strictly referable to either of these heads.

CONSTABLE OF ENGLAND.

(Called, also, "Marshall.") His office consisted in the care of the common peace of the realm in deeds of arms and matters of war. Lambard, Const. 4. He was to regulate all matters of chivalry, tournaments, and feats of arms which were performed on horseback. 3 Steph. Comm. 47. He held the court of chivalry, besides sitting in the aula regis. 4 Bl. Comm. 92.

The office is disused in England, except on coronation days and other such occasions of state, and was last held by Stafford, duke of Buckingham, under Henry VIII. His title is Lord High Constable of England. 3 Steph. Comm. 47; 1 Bl. Comm. 355.

CONSTABLE OF SCOTLAND.

An officer who was formerly entitled to command all the king's armies, in the absence of the king, and to take cognizance of all crimes committed within four miles of the king's person or of parliament, the privy council, or any general convention of the states of the kingdom. The office was hereditary in the family of Errol, and was abolished by 20 Geo. III. c. 43. Bell, Dict.; Ersk. Inst. 1. 3. 37.

CONSTITUTION.

Defined.

The form of government instituted by the people in their sovereign capacity, in which first principles and fundamental law are established. The supreme, permanent and fixed will of the people in their original, unlimited and sovereign capacity, and in it are determined the condition, rights and duties of every individual of the community. Phoebe, a woman of color, v. Jay, 1 Ill. 271.

The highest written law of the state. Haller, etc., Works v. Physical, etc., School, 249 Ill. 440.

The fundamental law of a free country, which characterizes the organism of the country, and secures the rights of the citizen, and determines his main duties as a freeman. 3 Barb. (N. Y.) 198. The written instrument defining the powers, limitations, and functions of the United States of America. It has been said to be a tripartite instrument, the parties being the state, the people and the United States. 3 Wis. 96.

In Old English Law. A statute.

Function.

A constitution, or foundation of government, embraces and declares the principles, regulates the division and exercise of the governing power, directs to what officers or agencies it shall be confided, and limits and controls its exercise,—in other words, establishes the government, delegates, limits and defines the manner in which the governing power of the state shall be exercised. Wabash, St. L. & P. Ry. Co. v. People, 105 Ill. 240.

The Constitution embodies the sovereign power of the state, by virtue of

which, and by which alone, all legislative, executive and judicial power is exercised, and is the source to which all departments of the government, and all of its officers, must ultimately look to authorize or sanction their official acts, not only conferring but limiting governmental powers to the modes prescribed. Law v. People, 87 Ill. 392.

Limitation or Grant.

The Constitution is a limitation on the powers of the legislature, but is regarded as a grant of power to the executive and judicial departments of the government. People v. Cook, etc., Court, 169 Ill. 205. To a similar effect see Richards v. Raymond, 92 Ill. 616.

Source of Private Rights.

A constitution is not the origin of private rights, and grants no rights to the people, but is the creature of their power, the instrument of their convenience, designed for their protection in the enjoyment of rights which they possessed before the constitution was made. Dickey, C. J., dissenting opinion, Weldenger v. Spruance, 101 Ill. 297.

CONSTITUTIONES.

Laws promulgated, i. e., enacted, by the Roman emperor. They were of the following kinds: (1) Edicta; (2) decreta; (3) rescripta, called, also, "epistolae." Sometimes they were general, and intended to form a precedent for other like cases. At other times they were special, particular, or individual (personales), and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain lex regia, whereby he was made the fountain of justice and of mercy. Brown.

CONSTRAINT.

In Scotch law. Duress.

It is a general rule that when one is compelled into a contract there is no effectual consent, though, ostensibly, there is the form of it. In such case, the contract will be declared void. The constraint requisite thus to annul a contract must be a vis aut metus qui cadet in constantem virum, such as would shake a man of firmness and resolution. Ersk. Inst. 3. 1. 16; Ersk. Inst. 4. 1. 26; 1 Bell, Comm. bk. 3, pt. 1 c. 1, § 1, art. 1, p. 295.

CONSTRUCT.

The word "construct" involves the idea of building or making for the first time, or of bringing into existence for the first time. Chicago & N. W. Ry. Co. v. Chicago, 140 Ill. 320.

CONSTRUCTION.

Function.

The legitimate purpose of all construction of a contract or other instrument in writing, is, to ascertain the intention of the party or parties in making the same, and when this is determined, effect will be given thereto, unless to do so would violate some established rule of property. Lehndorf v. Cope, 122 Ill. 326.

The object of the construction of contracts is to arrive at the intention of the parties. The subject matter of the contract, the nature of the instrument, the intention and purpose of the parties and the object they had in view will be taken into consideration and the intention carried into effect, so far as the rules of language and the rules of law will permit. Chicago Flour Co. v. Chicago, 243 Ill. 272.

Interpretation Distinguished.

Some writers have distinguished between construction and interpretation, holding that interpretation is ascertaining the true sense of the language of the writing by limiting the inquiry to a consideration and comparison of the words themselves, while construction is the drawing of conclusions respecting subjects that lie beyond the direct expression of the text, from elements known from and given in the text—conclusions which are in the spirit, though not within the letter of the text. Rosenstein v. Case, 9 Ill. App. 486.

The distinction between the "construction" and the "interpretation" of an instrument has never been observed in the jurisprudence of this country, the words being used indiscriminately, or rather the word "construction" is used as including what is ordinarily understood by the words "interpretation," "explanation," or "exposition," as well as what is embraced within its strict and limited signification. Rosenstein v. Case, 9 Ill. App. 486.

CONSTRUCTIVE ASSIGNMENT.

The words "constructive assignment," as applied to an assignment for benefit of creditors, signify this: that in the absence of a deed, instrument or writing transferring property to a person or persons, in trust, for the benefit of creditors, the court, upon proof of certain acts, declarations and admissions, or other matters in proof, will deduce therefrom a conclusion that an assignment for the benefit of creditors was intended, and out of the facts so proven make and construct for the parties an assignment which the parties never made for themselves. Price y. Laing, 152 Ill. 385.

CONSTRUCTIVE CONTEMPT.

Contempts which arise from matters not transpiring in court, but from refusal to obey its orders and decrees which are to be performed elsewhere. Holbrook v. Ford, 153 Ill. 647.

Contempts not in the presence of the court, such as tend by their operation to obstruct and embarrass or prevent the due administration of justice. People v. Wilson, 64 Ill. 225; Stuart v. People, 4 Ill. 404; Kyle v. People, 72 Ill. App. 177; O'Neil v. People, 113 Ill. App. 198; Welch v. People, 30 Ill. App. 412.

According to the general doctrine, any publication, whether by parties or strangers, which concerns a case in court, and has a tendency to prejudice the public concerning its merits, and to corrupt the administration of justice, or reflects on the tribunal or its proceedings, or the parties, the jurors or the counsel, may

be visted as a contempt. People v. Wilson, 64 Ill. 225.

Interfering with property in the hands of a receiver is a constructive contempt. Holbrook v. Ford, 153 Ill. 647.

CONSTRUCTIVE CONTRACTS.

Fictions of the law adopted to enforce legal duties by actions of contract. Chudnovski v. Eckels, 232 Ill. 316.

CONSTRUCTIVE DELIVERY.

When the vendor delivers to the purchaser, or to the purchaser's authorized agent, an order upon the vendor's bailed to deliver the goods sold to such purchaser or agent, there is a constructive delivery of the property. Stock Yard Co. v. Mallory, etc., Co., 157 Ill. 562.

CONSTRUCTIVE FRAUD.

Fraud which the law infers from the circumstances of a particular case, regardless of the intention of the parties. Blake v. Thwing, 185 Ill. App. 194.

Such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with positive fraud, and, therefore, are prohibited by law, as within the same reason and mischief as acts and contracts done malo animo. Haas v. Sternbach, 156 Ill. 55; Federal, etc., Co. v. Griffin, 173 Ill. App. 18.

Such as the law infers from the relationship of the parties or the circumstances by which they are surrounded, regardless of any actual dishonesty of purpose. Federal, etc., Co. v. Griffin, 173 Ill. App. 17.

CONSTRUCTIVE NOTICE.

Such notice as the law would imply from other facts and circumstances. Grundies v. Reid, 107 III. 309.

CONSTRUCTIVE POSSESSION.

Possession of land is constructive where a person has the paramount title which in contemplation of law draws to and connects it with the possession. Morrison v. Kelly, 22 Ill. 624.

CONSTRUCTIVE TRUST.

Defined.

One that arises where a person clothed with some fiduciary character by fraud or otherwise gains something for himself. Kern v. Beatty, 267 Ill. 132; Stahl v. Stahl, 214 Ill. 137; Pope v. Dapray, 176 Ill. 484; Reed v. Reed, 135 Ill. 491.

A trust arising whenever another's property has been wrongfully obtained, appropriated and converted into a different form. Reid v. Sheffy, 99 Ill. App.

A trust arising where a person obtains the legal title to property by virtue of a confidential relation and influence, under such circumstances that he ought not, according to the rules of equity and good conscience as administered in chancery. to hold and enjoy the beneficial interests of the property, courts of equity, in order to administer complete justice between the parties, will raise a trust, by construction, out of the circumstances or relations. Kern v. Beatty, 267 Ill. 132; Pope v. Dapray, 176 Ill. 484; Allen v. Jackson, 122 Ill. 571; Chapman v. Ferns, 118 Ill. App. 118. To the same effect see Miller v. Miller, 266 Ill. 531; Beach v. Dyer, 93 Ill. 298; Alwood v. Mansfield, 59 Ill. 507.

Creature of Equity.

A constructive trust is solely the creature of a court of chancery, and is established on purely equitable grounds. Miller v. Miller, 266 Ill. 531.

Classification.

Constructive trusts may be divided into three classes, to be determined according to the circumstances: first, trusts that arise from actual fraud practiced by one man upon another; second, trusts that arise from constructive fraud, including cases not actually tainted with moral fraud or evil intention, but contrary to some rule of public policy; third, trusts that arise from some equitable principle independent of any fraud, as where an estate is purchased and paid for, but the deed is not taken. Pope v. Dapray, 176 Ill. 485.

Elements.

There must be, in order to establish a constructive trust, one of two elements: either fraud, positive or constructive, existing at the time of the transaction, and influencing the cestui que trust, or a confidential relation and influence, by virtue of which some one has obtained the legal title to property which he ought not in equity and good conscience, to hold and enjoy. Miller v. Miller, 266 Ill. 533; Pope v. Dapray, 176 Ill. 485.

Fraud Essential Element.

All instances of constructive trusts, properly so called, may be referred to what equity denominates fraud, either actual or constructive, as essential elements and as their final source. Cline v. Cline, 204 Ill. 140. To the same effect see Miller v. Miller, 266 Ill. 532.

CONSULTUDINES FEUDORUM.

(Lat. feudal customs.) A compilation of the law of feuds or fiefs in Lombardy, made A. D. 1170.

It is called, also, the "Book of Fiefs," and is of great and generally received authority. The compilation is said to have been ordered by Frederic Barbarossa (Ersk. Inst. 2. 3. 5), and to have been made by two Milanese lawyers (Spelman), but this is uncertain. It is commonly annexed to the Corpus Juris Civilis, and is easily accessible. See 3 Kent, Comm. (10th Ed.) 665, note; Spelman.

CONSUL.

A commercial agent of a country residing in a foreign seaport, whose duty is to promote the commerce of the state commissioning him. 83 Tex. 88. He is

not a diplomatic agent, and has no authority to represent his country in diplomatic negotiations. 1 Kent, Comm. 43.

CONSULAR COURTS.

Courts wherein, pursuant to treaty, the consul exercises judicial powers in cases involving the rights of citizens of the country by which he is commissioned. 1 Kent. Comm. 42.

CONSUMMATE.

Complete; finished; entire. A marriage is said to be consummate. A right of dower is inchoate when coverture and seisin concur, consummate upon the husband's death. 1 Washb. Real Prop. 250, 251. A tenancy by the curtesy is initiate upon the birth of issue, and consummate upon the death of the wife. 1 Washb. Real Prop. 140; 13 Conn. 83; 2 Me. 400;

Bl. Comm. 128.

A contract is said to be consummated when everything to be done in relation to it has been accomplished. It is frequently of great importance to know when a contract has been consummated, in order to ascertain the rights of the parties, particularly in the contract of sale. It is also sometimes of consequence to ascertain where the consummation of the contract took place, in order to decide by what law it is to be governed.

CONSUMPTION.

A pulmonary affliction. Brower v. Callender, 105 Ill. 97.

CONTAGIOUS DISEASE.

One communicable by contact. Pierce v. Dillingham, 203 Ill. 158.

CONTAINED IN.

Goods are not "contained in" a place, within the meaning of the expression as used in fire insurance policies, unless at the time of the fire they are in the place described in the policy. Liebenstein

v. Aetna, etc., Co., 45 Ill. 305; Liebenstein v. Baltic, etc., Co., 45 Ill. 303; Jacobson v. Liverpool, etc., Co., 135 Ill. App. 23; Towne v. Fire Association, 27 Ill. App. 437.

Insurance on property "contained in" a named place or building is not suspended by the temporary removal of the property for purposes reasonably incident to its use. Jacobson v. Liverpool, etc., Co., 135 Ill. App. 24; Towne v. Fire Ass'n, 27 Ill. App. 437.

CONTEMPORANEOUS.

Living or existing at the time. Burke v. Snively, 208 Ill. 352.

The principle that a "contemporaneous" construction of a statute by the legislature is entitled to weight in later constructions of the same statute, does not require that such previous construction be of perfect or literal coincidence in point of time. Burke v. Snively, 208 Ill. 352.

CONTEMPT.

Defined.

A despising of the authority, justice or dignity of the court. Dahnke v. People, 168 Ill. 107.

Conduct such as tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with, or prejudice parties litigant, or their witnesses during the litigation. Dahnke v. People, 168 Ill. 107.

Contempt includes all acts calculated to impede, embarrass or obstruct the court in the administration of justice, such acts being considered as done in the presence of the court. Dahnke v. People, 168 Ill. 106; People v. Wilson, 64 Ill. 211; Stuart v. People, 4 Ill. 405.

Sergeant Hawkins' Classification.

Sergeant Hawkins classifies contempt as, contempts in the face of the court, and contemptuous words or writings concerning the court, and also as ordinary and extraordinary. People v. Wilson, 64 Ill. 225.

Classification.

Contempts may be divided into criminal and civil. Holbrook v. Ford, 153 Ill. 647; People v. Diedrich, 141 Ill. 669; Buck v. Buck, 60 Ill. 106; Crook v. People, 16 Ill. 536.

Contempts are divided into two classes, direct and constructive. Holbrook v. Ford, 153 Ill. 647; People v. Wilson, 64 Ill. 225; Stuart v. People, 4 Ill. 404; O'Neil v. People, 113 Ill. App. 198; Kyle v. People, 72 Ill. App. 177; Welch v. People, 30 Ill. App. 412.

Refusal to Testify.

The refusal of a witness to answer any question which he may be lawfully required to answer is contempt. Dixon v. People, 168 Ill. 189; Samuel v. People, 164 Ill. 385.

Disobedience of Orders.

A disobedience to the rules or orders of the court, which interferes with the due administration of the law. Dixon v. People, 168 Ill. 189.

Parties may be guilty of contempt by unseemly conduct in the presence of court during a session thereof, or by at any time or place contemptuously disobeying orders of court, provided there by in existence an order of court in respect to some matter over which the court, in making the order, had jurisdiction. Gardner v. The People, 100 Ill. App. 257.

Failure to Pay Money.

It is not contempt to fall to pay money which one neither has nor can obtain, and which he has not causelessly either put out of his hands or failed to receive. Schuele v. Schuele, 57 Ill. App. 192.

Interference with Witnesses.

Any conduct which is calculated to interfere with the proceedings by assaulting litigants or witnesses within the precincts of the court, or preventing or hindering, or endeavoring to prevent or hinder them in their access to the court or otherwise, is a contempt. Daknke v. People, 168 Ill. 107.

CONTENTS AND VALUE UNKNOWN.

Bill of Lading Inapplicable to Corn in Bulk.

A bill of lading containing the expression "contents and value unknown," which words were part of the printed form used, has no application to corn shipped in bulk, such words being intended to apply to packages whose contents were concealed from view. Tibbits v. Rock Island & P. Ry. Co., 49 Ill. App. 571.

CONTERMINOUS.

Adjacent or adjoining; having common boundaries. Hale, Hist. Com. Law, 98.

CONTIGUOUS.

United or joined together. People v. Crossley, 261 Ill. 99.

Adjacent; in actual contact; touching; near. Hoff v. Leneerman, 143 Ill. App. 171. To a similar effect see Adams County v. Quincy, 130 Ill. 579.

In actual contact; touching; meeting or adjoining at the surface or border. Culver v. Waters, 248 Ill. 166.

In close contact and a distance of feet destroys the contiguity within the meaning of a fire insurance policy. Arkell v. Commerce Ins. Co., 69 N. Y. 191, 25 Am. Rep. 168; affirming 7 Hun (N. Y.) 455.

CONTIGUOUS AND COMPACT TERRITORY.

Schools Act.

A high school district composed for the greater part of four school districts forming an oblong rectangle, with another district northeast of such rectangle, and having in part a common boundary with some of the districts forming the rectangle, is "contiguous and compact territory" within the meaning of section 6 of the act of 1911 (J. & A. ¶ 10371), relating to the formation of high school districts. People v. Crossley, 261 Ill. 100.

A territory including sixty-seven sections of land, whose greatest length is ten miles and its greatest width nine miles and a half, which, if situated in a square would have sides eight miles long, and if in a circle would have a diameter of not more than nine miles, and which would be included in a circle with a radius of five miles, is "contiguous and compact territory," within the meaning of section 6 of the act of 1911 (J. & A. ¶ 10371), relating to the establishment of high schools. People v. Swift, 270 Ill. 533.

Senatorial District.

The expression "contiguous and compact territory," used in section 6 of article 4 of the Constitution of 1870, relating to the formation of senatorial districts, means that counties or subdivisions of counties, when counties may be divided, when combined to form such a district must not only touch each other, but must be closely united territorially, and requires the legislature to form districts which shall not only be contiguous, but also of compact or closely united territory, so as to prevent the legislative evil known as the "gerrymander." People v. Thompson, 155 Ill. 478.

The expression "contiguous and compact territory," used in section 6 of article 4 of the Constitution of 1870, relating to the formation of senatorial districts, does not require that the district when formed must take the shape of a square or circle in which all points are equidistant from the center, or a close approximation to perfect compactness of territory, but leaves a large discretion to the legislature in applying the principle of compactness, leaving to the courts only the duty of determining whether the principle of compactness has been applied at all. People v. Thompson, 155 Ill. 480. See People v. Swift, 270 Ill. 533; People v. Crossley, 261 Ill. 99 (both citing and approving People v. Thompson, supra).

CONTIGUOUS PROPERTY.

Property Included.

The expression "contiguous property," used in section 1 of the act of 1887 (J. & A. ¶ 1388), known as the Local Improvement Act, relating to special taxation,

uses the word "contiguous" in its popular sense, as meaning in actual or close contact; touching; adjacent; near. Langlois v. Cameron, 201 Ill. 306; Bloomington v. Reeves, 177 Ill. 166; Adams County v. Quincy, 130 Ill. 579.

The expression "contiguous property," used in section 1 of the act of 1887 (J. & A. ¶ 1388), known as the Local Improvements Act, relating to special taxation for local improvements, is used with reference to the popular meaning of the word "contiguous," so that in a case where the improvement is a street or a sidewalk, the quoted expression refers to such property as abuts the improvement, or is bounded by the street. Adams County v. Quincy, 130 Ill. 579.

The expression "contiguous property," used in section 1 of the act of 1887 (J. & A. ¶ 1388), known as the Local Improvement Act, relating to special taxation for local improvements, necessarily means real property which is contiguous to and is benefitted by the proposed improvement. Rich v. Chicago, 152 Ill. 35.

Degree of Separation.

The expression "contiguous property," used in section 1 of the act of 1887 (J. & A. ¶ 1388), known as the Local Improvements Act, relating to special taxation for local improvements, includes land which is separated from a proposed improvement by a sidewalk not included in the improvement, the sidewalk, for such purposes, being regarded as a part of the street. Chicago B. & Q. R. Co. v. Quincy, 136 Ill. 569.

Property Taken for Public Use.

Within the meaning of the rule that damages may be allowed for the injury to "contiguous property" by a taking for public use, the quoted expression necessarily means property in some way distinguishable from the lot or tract of which a part is taken, and a tract adjoining the land taken is still contiguous, within the meaning of the rule, although the owner platted it, and though on the plat a line divides such property from the property taken. Metropolitan W. S. E. Ry. Co. v. Johnson, 159 Ill. 437.

Railroad Right of Way.

The expression "contiguous property," used in section 9 of article 9 of the Constitution of 1870, and section 1 of the act of 1887 (J. & A. ¶ 1388), known as the Local Improvement Act, relating to special taxation for local improvements, includes the right of way of a railway in the public street which is contiguous to a proposed improvement. Spring Creek District v. Elgin J. & E. Ry. Co., 249 Ill. 287; Cicero Ry. Co. v. Chicago, 176 Ill. 506; Billings v. Chicago, 167 Ill. 341; Chicago R. I. & P. Ry. Co. v. Moline, 158 Ill. 71; Chicago & A. R. Co. v. Joliet, 153 Ill. 652; Lightner v. Peoria, 150 Ill. 83; Kuehner v. Freeport, 143 Ill. 104; Illinois C. R. Co. v. Mattoon, 141 Ill. 34; Chicago C. Ry. Co. v. Chicago, 90 Ill. 576.

"Property" Synonymous.

The expression "contiguous property," used in section 9 of article 9 of the Constitution of 1870, and the word "property," used in section 31 of article 4 of the same instrument, relating to special assessments, refer to the same class of property, and empower the legislature to make liable for a special assessment under a drainage statute any property which may be made so liable for a local improvement by a city. Spring Creek District v. Elgin J. & E. Ry. Co., 249 Ill. 287.

CONTIGUOUS TERRITORY, NOT EXCEEDING TWO SQUARE MILES.

The expression "contiguous territory, not exceeding two square miles, used in section 5 of article 11 of the Cities and Villages Act (J. & A. ¶ 1522), relating to the organization of villages from unorganized territory, means an area which shall in extent not exceed two square miles, and which shall be contiguous. People v. Marquiss, 192 Ill. 382.

The expression "contiguous territory, not exceeding two square miles," used in section 5 of article 11 of the Cities and Villages Act (J. & A. \P 1522), relating to the organization of villages from unorganized territory, does not include territory which is contiguous only in that the

two tracts composing the proposed village are connected by a point at the corner of the tracts where the two boundary lines intersect, so that one could not pass from one tract to another without passing over lands not within the proposed village. Wild v. People, 227 Ill. 560.

CONTINGENCY.

An event which may or may not occur; that which is possible or probable; a fortuitous event; a chance. Miland v. Meiswinkel, 82 III. App. 526.

A contingency has the element of uncertainty and doubt, and is defined as an event which is possible but which may or may not occur, in the nature of a casualty, accident or chance, and results from an agency the operation of which is uncertain; dependent upon a possibility and on causes which are undetermined or unknown. People v. Toledo, St. L. & W. R. Co., 231 Ill. 127.

Roads and Bridges Act.

The word "contingency," used in section 14 of the Roads and Bridges Act of 1883, refers to some unusual or extraordinary event which does not happen regularly in the ordinary course of events. People v. Atchison T. & S. F. Ry. Co., 252 Ill. 408; People v. Lake Erie & W. R. Co., 248 Ill. 35; People v. Kankakee & S. W. R. Co., 237 Ill. 366; Toledo, St. L. & W. R. Co. v. People, 226 Ill. 561.

CONTINGENT.

Defined.

Uncertain and liable to happen. Meehan v. Parsons, 194 Ill. App. 140.

Estate.

An estate is contingent when a right of enjoyment is to accrue on an event which is dubious and uncertain. Strode v. McCormick, 158 Ill. 148; Smith v. West, 103 Ill. 337.

Obligation.

Where an obligation is an absolute one, although not yet due, it is not contingent, but where the very existence of an obligation depends upon some future undetermined event it is contingent. Mackin v. Haven, 187 Ill. 495; Stone v. Clark, 40 Ill. 414; Union, etc., Co. v. Shoemaker, 172 Ill. App. 386.

CONTINGENT DAMAGES.

Those given where the issues upon counts to which no demurrer has been filed are tried before demurrer to one or more counts in the same declaration has been decided. 1 Strange, 431.

CONTINGENT ESTATE.

A contingent estate depends for its effect upon an event which may or may not happen; as, an estate limited to a person not in esse, or not yet born. Crabb, Real Prop. § 946.

CONTINGENT EXPENSES.

The expenses of a successful voluntary trip of the mayor of a city to lobby before Congress for an appropriation for the repair of city levees damaged by flood are not "contingent expenses," which may be paid from the contingent fund. Meehan v. Parsons, 194 Ill. App. 140.

CONTINGENT FUND.

The reason for making a levy to provide a contingent fund for a municipal corporation is to provide a small fund out of which items of expenses which will necessarily arise during the year, and which cannot appropriately be classified under any of the specific purposes for which other taxes are levied, may be paid. People v. Cairo V. & C. Ry. Co., 247 Ill. 363.

CONTINGENT LEGACY.

A legacy made dependent upon some uncertain event. 1 Rop. Leg. 506. A legacy which has not vested. Williams, Ex'rs.

CONTINGENT REMAINDER.

Defined.

A chance of having an estate if the contingency turn out favorably to the re-

mainder man. Butterfield v. Sawyer, 187 Ill. 602. To a similar effect see Williams v. Esten, 179 Ill. 273.

A remainder is contingent if the persons, who are to take, are not in esse, or are not definitely ascertained. Harvard College v. Balch, 171 Ill. 280; Temple v. Scott, 143 Ill. 297; Kellett v. Shepard, 139 Ill. 447; Bates v. Gillett, 132 Ill. 296; Scofield v. Olcott, 120 Ill. 371; Marvin v. Ledwith, 111 Ill. 150.

An estate which is not ready, from its commencement to its end, to come into possession at any moment when the prior estate may end. Carter v. Carter, 234 Ill. 511; Harvard College v. Balch, 171 Ill. 280.

One whose vesting or taking effect in interest is by the terms of its creation made to depend on some contingency, which may never happen at all or may not happen within the requisite prescribed time, by reason whereof its capacity of vesting or taking effect in interest may be forever defeated. Smith v. Chester, 272 Ill. 436.

Blackstone's Definition.

One limited to take effect either to a dubious or uncertain person, or upon a dubious or uncertain event. Smith v. Chester, 272 Ill. 435; Meldahl v. Wallace, 270 III. 228; Hill v. Hill, 264 III. 222; Northern, etc., Co. v. Wheaton, 249 Ill. 612; Pingrey v. Rulon, 246 Ill. 118; Golladay v. Knock, 235 Ill. 418; Carter v. Carter, 234 Ill. 511; Brownback v. Keister, 220 Ill. 551; Ruddell v. Wren, 208 Ill. 515; Thompson v. Adams, 205 Ill. 558; Harvard College v. Balch, 171 Ill. 280: Ducker v. Burnham, 146 Ill. 22; Chapin v. Crow, 147 Ill. 222; Temple v. Scott, 143 Ill. 296; Haward v. Peavey, 128 Ill. 439; Marvin v. Ledwith, 111 Ill. 150; Ayars v. Doyle, 166 Ill. App. 420.

A remainder may be contingent where the person to whom it is limited is fixed and certain, but the event upon which it is to take effect is vague or uncertain, as, where land is given to A for life, and in case B survives him then with remainder to B in fee. Here B is a certain person, but the remainder to him is a contingent remainder, depending upon a du-

bious event—the uncertainty of his surviving A. During the joint lives of A and B it is contingent, and if B dies first it never can vest in his heirs but is forever gone; and if A dies first the remainder to B becomes vested. Chapin v. Crow, 147 Ill. 223.

Chancellor Kent's Definition.

A remainder limited so as to depend on an event or condition which is dubious and uncertain, and may never happen or be performed, or not until after the determination of the particular estate. Temple v. Scott, 143 Ill. 296; Peoria v. Darst, 101 Ill. 618; Lachenmyer v. Gehlbach, 266 Ill. 18.

Professor Gray's Rule.

A devise to A for life, remainder to such of his children as survive him, creates a contingent remainder. Lachenmyer v. Gehlbach, 266 Ill. 18; Brechbeller v. Wilson, 228 Ill. 507.

Classification.

Contingent remainders are generally divided into two classes, according as the contingency relates to the uncertainty of the person who is to take or to the uncertainty of the event. Smith v. Chester, 272 Ill. 436.

Not Estate.

A contingent remainder is not an estate and is merely a chance of having one, but it is a right in property which the remainder-man could release to the life tenant. Ortmayer v. Elcock, 225 Ill. 346.

Nature of Estate Created.

A contingent remainder is limited by the instrument creating it either to a person not yet ascertained or not in being, or so as to depend upon a dubious and uncertain event which may never happen, so that the particular estate may chance to be determined, and the remainder never take effect. Meldahl v. Wallace, 270 Ill. 228; Carter v. Carter, 234 Ill. 511; Harvard College v. Balch, 171 Ill. 279; Chapin v. Crow, 147 Ill. 222; Ayars v. Doyle, 166 Ill. App. 420.

With Double Aspect.

If there are remainders so limited that the second is a substitute for the first in case it should fail, and not in derogation of it, the remainder is said to be in a contingency with double aspect. Fearne, Cont. Rem. 373.

Where there is a devise to one for life with remainder to his children or the survivor or survivors of them, but in case of his death without issue surviving him, then to named persons, share and share alike, and in the case of the death of either of such persons without issue the share of the one so dying to go to the survivor or survivors of them, but in case the one so dying shall leave children then such child or children to receive the parent's share, the remainder is a contingent one with a double aspect. Smith v. Chester, 272 Ill. 446.

Intention.

Remainders will only be held to be contingent where the intention to create such interest is clearly manifested by the words of the instrument. Mettler v. Warner, 243 Ill. 610; Armstrong v. Barber, 239 Ill. 399; Carter v. Carter, 234 Ill. 511; Knight v. Pottgieser, 176 Ill. 373; Harvard College v. Balch, 171 Ill. 279; Grimmer v. Friederich, 164 Ill. 248; Ducker v. Burnham, 146 Ill. 23; Kellett v. Shepard, 139 Ill. 443; Scofield v. Olcott, 120 Ill. 374.

"Vested Remainder" Compared.

A remainder which is subject to a contingency is not always a contingent remainder, for if the contingency on which the remainder depends is a condition subsequent the remainder is vested although the happening of the contingency may defeat it, while if the contingency be a condition precedent, the remainder is contingent. Hill v. Hill, 264 Ill. 222; Golladay v. Knock, 235 Ill. 418.

"Vested Remainder" Distinguished.

The chief characteristic which distinguishes a vested from a contingent remainder is the principal capacity to take effect in possession should the possession become vacant, and the certainty that

the event upon which the vacancy depends will happen some time, and not upon the certainty that it will happen or the possession become vacant during the lifetime of the remainder man, the uncertainty, therefore, which distinguishes the contingent remainder being of the right, and not of the actual enjoyment. Smith v. Chester, 272 Ill. 436. To the same effect see Meldahl v. Wallace, 270 Ill. 228; Lachenmyer v. Gehlbach, 266 Ill. 22; Carter v. Carter, 234 Ill. 511; Harvard College v. Balch, 171 Ill. 280; Hawkins v. Bohling, 168 Ill. 219; Chapin v. Crow, 147 Ill. 222; Temple v. Scott, 143 Ill. 297.

CONTINGENT USE.

A use limited in a deed or conveyance of land which may or may not happen to vest, according to the contingency expressed in the limitations of such use. Such a use as by possibility may happen in possession, reversion, or remainder. 1 Coke, 121; Comyn, Dig. "Uses" (K 6). A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B. after a marriage had between them. 2 Sharswood, Bl. Comm. 234. A contingent remainder limited by way of uses. Sugd. Uses, 175. See, also, 4 Kent, Comm. 237 et seq.

CONTINUAL CLAIM.

In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual," because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. Litt. §§ 419-423; Co. Litt. 250a; 3 Bl. Comm. 175.

Lord Coke calls it an "entry in law," and says that it is as strong as an "entry in deed" (fact). Co. Litt. 256b.

It is now abolished. St. 3 & 4 Wm. IV. c. 27, § 11.

CONTINUE.

An agreement for the construction of a wall between adjoining land providing that the wall shall "continue to be a party wall" means, by the word "continue," from the time of building the wall. Gibson v. Holden, 115 Ill. 205.

CONTINUING IN GOOD STANDING.

Where the constitution of a beneficiary society provides that a certificate shall be incontestable after two years from the date of a certificate, the member "continuing in good standing," a member does not forfeit good standing by suicide, the quoted expression meaning that the member must centinue to be in good standing for the time named and up to the time of death, referring to good standing existing up to the time of death, and not to such loss as occurs by the act of death, the life of the insured being ended the moment the act is completed, without interval for loss of good standing. Royal Circle v. Achterrath, 204 Ill. 563.

CONTINUING GUARANTY.

A guaranty limited as to amount but not limited as to time will in general be construed as a continuing guaranty unless the circumstances of the transaction show a different intention. Frost v. Standard, etc., Co., 116 Ill. App. 645.

A guaranty which merely limits the amount of the guarantor's liability, without limiting the amount of credit which may be extended to the principal under the guaranty is a continuing guaranty. Taussig v. Reid, 145 Ill. 496.

CONTINUING INJURY.

The expression "continuing injury," as applied to the right to maintain successive actions, means no more than that the case involves a transient injury, where the cause of such injury has been wrong-

fully allowed to continue. Illinois C. R. Co. v. Lockard, 112 Ill. App. 427.

CONTINUING NUISANCE.

The failure of a levee and sanitary district to provide sufficient outlet for surface water from adjoining land outside the district, so that a tenant of such adjoining land may have as sufficient an outlet for the drainage of surface waters due to extraordinary floods as existed before the erection of the levee, constitutes a continuing nuisance for which successive suits may be maintained. Handfelder v. East Side, etc., District, 194 Ill. App. 266.

CONTRA BONOS MORES.

Against sound morals.

Contracts which are incentive to crime, or of which the consideration is an obligation or engagement improperly prejudicial to the feelings of a third party, offensive to decency or morality, or which has a tendency to mischievous or pernicious consequences, are void, as being contra bonos mores. 2 Wils. 447; Cowp. 729; 4 Campb. 152; 1 Barn. & Ald., 683; 16 East, 150.

CONTRA PACEM.

(Lat. against the peace.) In pleading. An allegation in an action of trespass or ejectment that the actions therein complained of were against the peace of the king. Such an allegation was formerly necessary, but has become a mere matter of form, and not traversable. 4 Term R. 503; 1 Chit. Pl. 375; Archb. Civ. Pl. 169.

CONTRABAND.

Intoxicating liquor is not contraband. Cortland v. Larson, 273 Ill. 610.

CONTRABAND OF WAR.

In international law. Goods which neutrals may not carry in time of war to either of the belligerent nations without subjecting themselves to the loss of the goods, and formerly the owners, also, to the loss of the ship and other cargo, if intercepted. 1 Kent, Comm. 138, 143.

"The classification of goods as contraband has much perplexed text writers and jurists. A strictly accurate and satisfactory classification is, perhaps, impracticable; but that which is best supported by American and English decisions may be said to divide all merchandise into three classes: (1) Articles manufactured and primarily or ordinarily used for military purposes in time of war; (2) articles which may be, and are, used for purposes of war or peace, according to circumstances; (3) articles exclusively used for peaceful purposes. Merchandise of the first class destined to a belligerent country or place occupied by the army or navy of belligerent is always contraband. Merchandise of the second class is contraband only when destined to the military or naval use of the belligerent. While merchandise of a third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege." 5 Wall. 58.

CONTRACT.

Defined.

A promise from one to another, either made in fact, or created by the law, either to do, or refrain, some lawful thing. Umlauf v. Umlauf, 103 Ill. 654.

Blackstone's Definition.

An agreement, upon sufficient consideration, to do or not to do a particular thing. East St. Louis v. East St. Louis, etc., Co., 98 Ill. 449; Patmor v. Haggard, 78 Ill. 610.

Chancellor Kent's Definition.

An agreement of two or more persons upon a sufficient consideration to do or not to do a particular thing. Canterberry v. Miller, 76 Ill. 357. To a similar effect see Coles v. Madison County, 1 Ill. 160.

At Common Law.

At common law the word "contract" included all rights which could be en-

forced by any of the actions ex contractu. Highway Commissioners v. Bloomington, 253 Ill. 171.

Popular and Legal Meanings Compared.

The term "contract," in its popular signification, is generally limited to actual agreements between determinate contracting parties, but in law it has a much more extended signification, and includes many duties and obligations growing out of the relations which are regarded by the law as a species of contract, where it is clear that there was never any actual agreement between the parties to such relations. Umlauf v. Umlauf, 103 Ill. 654.

Implies Assent.

The word "contract," ex vi termini, implies the assent of two or more minds to the same proposition. Black v. Wabash St. L. & P. Ry. Co., 111 Ill. 358.

Ignorance of Terms.

If one sign a written instrument containing mutual stipulations between himself and another, without any knowledge of its contents, there will not be in fact, in the strict sense of the term, a contract between them, though in a legal sense there may be. Black v. Wabash, St. L. & P. Ry. Co., 111 Ill. 358.

Express or Implied.

Clause 1 of section 2 of the Municipal Court Act (J. & A. ¶ 3314), giving jurisdiction in all actions on "contracts, express or implied," includes jurisdiction of an action to recover for breach of an implied contract between a street railroad and a passenger, to carry the passenger safely. Chudnovski v. Eckels, 232 Ill. 320.

Corporate Charter.

The charter of a corporation is a contract between the state and the corporation. Venner v. Chicago C. Ry. Co., 246 Ill. 174; State v. Illinois C. R. Co., 246 Ill. 205; Belleville v. St. Clair, etc., Co., 234 Ill. 433; Illinois C. R. Co. v. Goodwin, 94 Ill. 264; Illinois C. R. Co. v. Irvin, 72 Ill. 454; Chicago & N. W. Ry. Co. v. Peo-

ple, 56 Ill. 379; Neustadt v. Illinois C. R. Co., 31 Ill. 485; Coles v. Madison County, 1 Ill. 160.

Insurance.

A contract for insurance is neither more nor less than a contract to indemnify for loss or injury or for damage to the person or thing which is the subject matter of the insurance. Vredenburgh v. Physicians, etc., Co., 126 Ill. App. 511; Niagara, etc., Co. v. Heenan, 181 Ill. 580; Gray v. Merchants, etc., Co., 125 Ill. App. 373.

Judgment or Decree.

Judgments and decrees are not contracts. Williams v. Waldo, 4 Ill. 269; Brown v. Gerson, 182 Ill. App. 185.

Promise on Executed Consideration.

A promise to do a thing on an executed consideration is not a contract. Vogel v. Pekoc, 157 Ill. 342.

Promise on Illegal Consideration.

A promise to do a thing in consideration of an illegal or impossible engagement is not a contract. Vogel v. Pekoc, 157 Ill. 342.

Remedy.

Remedies which the law affords to enforce contracts constitute no part of the contracts themselves. Templeton v. Horne, 82 Ill. 492; Smith v. Bryan, 34 Ill. 377; Reapers' Bank v. Willard, 24 Ill. 438; Wood v. Child, 20 Ill. 212; Williams v. Waldo, 4 Ill. 269.

Railroad Ticket.

A railroad ticket is not a contract. Burdick v. People, 149 Ill. 607.

CONTRACT FOR INSURANCE.

Contracts for insurance are considered as temporary contracts pending the issuance of the policy. Cottingham v. National Mutual Church Ins. Co., 209 Ill. App. 557.

CONTRACT IMPLIED IN FACT.

Those where there are facts and circumstances from which, in connection with applicable legal principles, a meet-

ing of the minds can be inferred or deduced. Hickey v. Chicago C. Ry. Co., 148 Ill. App. 213.

Contracts implied in fact are distinguished from contracts implied in law in that in the former the contract defines and limits the duty, while in the latter, the duty defines and limits the contract. Hickey v. Chicago C. Ry. Co., 148 Ill. App. 213.

CONTRACT IMPLIED IN LAW.

A legal fiction, adopted for the purpose of enforcing legal duties by actions ex contractu when no contract, either express or implied in fact, exists. Hickey v. Chicago C. Ry. Co., 148 Ill. App. 213.

A term used to cover a class of obligations where the law, though the defendant does not intend to impose an obligation, imposes an obligation on him, notwithstanding the absence of intention on his part, and, in many cases, in spite of his actual dissent. Chicago v. Pittsburg, C. C. & St. L. R. Co., 146 Ill. App. 410.

CONTRACT IN WRITING.

A shipping order in writing signed and delivered by the shipper to the carrier and accepted by the carrier is a contract in writing between the parties. Michigan C. R. Co. v. Chicago, etc., Co., 124 Ill. App. 160.

CONTRACTED AND SOLEMNIZED.

The expression "contracted and solemnized," used in section 1 of the Divorce Act (J. & A. ¶ 4215), relating to causes for divorce, includes not only a marriage by a ceremonial celebration, whether religious or official, but also a marriage self-solemnized by the parties, by a contract which constitutes them man and wife. Bowman v. Bowman, 24 Ill. App. 172.

CONTRACTOR.

Defined.

One who, as an independent business, undertakes to do specific jobs of work without submitting himself to control as to the petty details. Carey-Lombard, etc., Co. v. Jones, 187 Ill. 208.

What Constitutes.

One who contracts to do a specific piece of work, furnishing his own assistants, and executing the work either entirely in accordance with his own ideas, or in accordance with a plan previously given to him by the person for whom the work is done, without being subject to the orders of the latter in respect to the details of the work, is a contractor and not a serv-Linquist v. Hodges, 248 Ill. 501; Harding v. St. Louis, etc., Yards, 242 Ill. 449; Whitney, etc., Co. v. O'Rourke, 172 Ill. 181; Foster v. Wadsworth-Howland Co., 168 Ill. 518; Jefferson v. Jameson, etc., Co., 165 Ill. 141; Hale v. Johnson, 80 Ill. 186; Joseph v. Philip Henrici Co., 137 Ill. App. 174; Chicago, etc., Co. v. Campbell, 116 Ill. App. 327; Galatia, etc., Co. v. Harris, 116 Ill. App. 73; Arasmith v. Temple, 11 Ill. App. 48.

One who follows a regular independent employment, in the course of which he offers his services to the public to accept orders and execute commissions for all who may employ him in a certain line of duty, using his own means for the purpose and being accountable for final performance. Arasmith v. Temple, 11 Ill. App. 47.

One who engages to do a particular thing, the idea of personal service not being a necessary element in the bargain. Schmid v. Heath, 173 Ill. App. 651.

Liens Act.

One who installs an engine in an electric light plant by contract with the corporation constructing the plant is a "contractor" within the meaning of section 1 of the Liens Act (J. & A. ¶7139), although the corporation contracting for the engine owns the land on which the plant is constructed and is under contract to sell the land and plant, when completed, to a city. Salem v. Lane, etc., Co., 189 Ill. 601.

CONTRABIENTS.

This word was used in the time of Edw. II. to signify those who were op-

posed to the government, but were neither rebels nor traitors. Jacob.

CONTRIBUTORY NEGLIGENCE.

Defined.

A lack of due care by plaintiff which contributes to the injury. Lund v. Osborne, 183 Ill. App. 69.

The omission of the employee to use those precautions for his own safety which ordinary prudence requires. Wheeler v. Chicago & W. I. R. R. Co., 267 Ill. 319.

Such an act or omission on the part of a plaintiff, amounting to a want of ordinary care, as, concurring or co-operating with the negligent act of the defendant, is a proximate cause or occasion of the injury complained of. St. Louis, etc., Yards v. Godfrey, 198 Ill. 297.

A want of ordinary care upon the part of a person injured by the actionable negligence of another, combining and concurring with that negligence and contributing to the injury as a proximate cause thereof, without which the injury would not have occurred. St. Louis, etc., Yards v. Godfrey, 198 Ill. 296; Belvidere, etc., Co. v. Boyer, 122 Ill. App. 124.

Negligence on the part of the plaintiff. Clayton v. Brooks, 150 Ill. 105; Illinois C. R. Co. v. Scheevers, 134 Ill. App. 517.

Contributory negligence involves the idea of some fault or breach of duty on the part of an employee to take precautions for his own safety, while he may assume a risk although he may be free from any suggestion of fault or negligence of a danger which may be present notwithstanding he may exercise all reasonable care possible to avoid it. Seaboard Air Line Ry. v. Horton, 233 U. S. 492; 8 N. C. C. A. 835.

Test.

The test of contributory negligence is not always a failure to exercise the best judgment or to use the wisest precaution, but some allowance is to be made for the influences which govern human action, and what would, under some circumstances, be want of reasonable care, may not be in others, so that the test is whether a prudent person, in the same

situation and having the knowledge possessed by the one in question, would do the alleged negligent act. Belvidere, etc., Co. v. Boyer, 122 Ill. App. 124.

CONTRIBUTING INSURANCE.

Insurance of the same property interest. Traders, etc., Co. v. Pacaud, 51 Ill. App. 257.

CONTRIBUTION.

At Common Law.

The payment by each or any one of several parties who are liable, in company with others, of his proportionate part of the whole liability or loss, to one or more of the parties so liable upon whom the whole loss has fallen, or who has been compelled to discharge the whole liability. 1 Bibb (Ky.) 562; 4 Johns. Ch. (N. Y.) 545; 4 Bouv. Inst. note 3935.

In Civil Law.

A partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property proportionably to the amount of their respective credits. Civ. Code La. art. 2522, note 10. It is a division pro rata. Merlin, Repert.

CONTROL.

No Legal or Technical Meaning.

The word "control" has no legal or technical meaning distinct from that given in its popular acceptation. Ure v. Ure, 185 Ill. 218.

"Manage" Synonymous.

The words "control" and "manage" have been held to be synonymous. Ure v. Ure, 185 Ill. 218.

"Superintendence" Synonymous.

As a noun the word "superintendence" is expressive of the meaning of "control." Ure v. Ure, 185 Ill. 218.

CONTROVERSY.

A dispute arising between two or more persons. It differs from case, which in-

cludes ail suits, criminal as well as civil; whereas controversy is a civil, and not a criminal, proceeding. 2 Dall. (U. S.) 419, 431, 432; 1 Tucker, Bl. Comm. App. 420, 421; Story, Const. § 1668.

CONTROVERTED.

Facts are "controverted," within the meaning of section 122 of the Practice Act (J. & A. ¶8659), relating to reviews by the Supreme Court, whenever they tend, either as evidentiary or subordinate facts, as to the ultimate facts, to sustain the issue made by the pleading in the cause, irrespective of whether the evidence, in itself, is or is not conflicting. La Salle County v. Milligan, 143 Ill. 329.

CONTROVERTED TITLES.

The expression "controverted titles," used in section 39 of the Partition Act (J. & A. ¶8352), includes all disputed titles, of every nature. Hurlbut v. Talbot, 273 Ill. 365; Gage v. Reid, 104 Ill. 513.

CONTUBERNIUM.

In civil law. A marriage between persons of whom one or both were slaves. Poth. Cont. pt. 1, c. 2, § 4.

CONTUMACY.

(Lat. contumacia, disobedience.) The refusal or neglect of a party accused to appear or answer to a charge preferred against him in a court of justice. Chiefly used in ecclesiastical courts; "contempt" being used in the civil courts.

Actual contumacy is the refusal of a party actually before the court to obey some order of the court.

Presumed contumacy is the act of refusing or declining to appear upon being cited. 3 Curt. Ecc. 1.

CONTUSION.

In medical jurisprudence. An injury or lesion, arising from the shock of a body with a large surface, which presents no



loss of substance, and no apparent wound. If the skin be divided, the injury takes the name of a contused wound. See 1 Chanc. Prac. 38; 4 Car. & P. 381, 487, 558, 565; 6 Car. & P. 684; 2 Beck, Med. Jur. 178.

CONVENIENT.

Fit; suitable; proper; adapted. Finlay v. Dickerson, 29 Ill. 20.

CONVENTICLE.

A private assembly of a few folks under pretense of exercise of religion. The name was first given to the meetings of Wickliffe, but afterwards applied to the meetings of the nonconformists. Cowell. The meetings were made illegal by 16 Car. II. c. 4, and the term, in its later signification, came to denote an unlawful religious assembly.

CONVENTION.

A general term which comprehends all kinds of contracts, treaties, pacts, or agreements. The consent of two or more persons to form with each other an engagement, or to dissolve or change one which they had previously formed. Domat, Civ. Law; Dig. 2. 14. 1. 1; Bouv. Inst. note 100.

CONVENTIONAL ESTATES.

Those estates for life which are expressly created by the act of the parties, as distinguished from legal estates, or those which are created by operation of law. 2 Bl. Comm. 120.

CONVENTIONAL SUBROGATION.

Subrogation resulting from an express agreement with the creditor to the effect that the security held by him shall be assigned to the person paying, or kept on foot for his benefit. Loeb v. Fleming, 15 Ill. App. 508.

CONVERSATION.

The word "conversation," used in section 1 of division 1 of the Criminal Code

(J. & A. ¶3434), relating to abduction, means "manner of life; habits of life; conduct." Bradshaw v. People, 153 Ill. 160.

CONVERSION.

Defined.

Any unauthorized act which deprives a man of his property permanently or for an indefinite time. Union, etc., Co. v. Mallory, etc., Co., 157 Ill. 563; Newlin v. Prevo, 90 Ill. App. 526.

A conversion is a positive, tortious act. Mere non-feasance or neglect of some legal duty, will not suffice to support trover although it may constitute sufficient ground to maintain an action on the case. Sturges v. Keith, 57 Ill. 456; Newlin v. Prevo, 90 Ill. App. 527; Race v. Chandler, 15 Ill. App. 538.

A conversion, in the sense of the law of trover, consists either in the appropriation of the thing to the party's own use and beneficial enjoyment, or in its destruction, or in exercising dominion over it in exclusion or defiance of the plaintiff's right, or in withholding the possession from the plaintiff under a claim of title inconsistent with his own. Race v. Chandler, 15 Ill. App. 537.

Any dealing with the thing which, impliedly or by its terms, excludes the owner's dominion. Spalding v. People, 172 Ill. 56.

Any distinct act of dominion wrongfully exerted over one's property in denial of his right, or inconsistent with it, is a conversion. Follett v. Edwards, 30 Ill. App. 387.

There is a conversion wherever the rightful owner has been deprived of his property by some unauthorized act of another. Campau v. Bemis, 35 Ill. App. 44.

Any act of the defendant which negatives or is inconsistent with the property or possession. Campau v. Bemis, 35 Ill. App. 43.

What Constitutes.

One may be guilty of a conversion by dealing with or claiming property in goods as his own, or even by asserting the right of another over them. Campau v. Bemis, 35 Ill. App. 43.

When one refuses to surrender pledged property upon proper demand and tender of the amount due, there is a wrongful act amounting to a conversion. Schwartz v. Chicago, etc., Society, 195 Ill. App. 97.

A demand and refusal are not a conversion, but merely evidence of a conversion. Race v. Chandler, 15 Ill. App. 539.

A conversion may be had by the wrongful taking of personal property, by some other illegal assumption of ownership, by illegally using or misusing property, or by a wrongful detention of goods. Bruner v. Dyball, 42 Ill. 36.

A wrongful assumption of the ownership of property is a conversion in itself. Union, etc., Co. v. Mallory, etc., Co., 157 Ill. 563; Bruner v. Dyball, 42 Ill. 36.

Equitable.

That change in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, and transmissible and descendible as such. Haward v. Peavey, 128 Ill. 435.

The exchange of one species of property for another, which takes place under some circumstances in the consideration of the law, although no such change has actually taken place. Land is held to be converted into money, in equity, when the owner has contracted to sell; and if he die before making a conveyance, his executors will be entitled to the money, and not his heirs. 2 Vern. 52; 1 W. Bl. 129. Money may be held to be converted into land under various circumstances; as where, for example, a man dies before a conveyance is made to him of land which he has bought. 10 Pet. (U. S.) 563; Bouv. Inst. Index.

In order to establish a conversion by will, it is not essential that there should be an express declaration in the instrument that the land shall be treated as money, although not sold, or that money shall be treated as land although not actually laid cut in the purchase of it, but such direction may arise from the nature

of the instrument or the language employed, the test being, has the will or deed absolutely directed the conversion? Haward v. Peavey, 128 Ill. 435.

CONVERTIBLE COUPON BONDS.

"Convertible coupon bonds" have been defined as coupon bonds which expressly provide that they may, at the option of the holder, be converted into registered bonds. However, bonds are often referred to as "convertible" bonds where what is meant is that they provide that they may be converted into stock of the corporation, under certain conditions. 2 Fletcher Cyclopedia Corporations 1919.

CONVEY.

The use of the word "convey" is equivalent to a grant at common law, and passes the title, importing a transfer of title from one person to another. Cross v. Weare, etc., Co., 153 Ill. 510.

CONVEY AND WARRANT.

The words "convey and warrant" in the granting clause of a deed do not convey an estate in fee simple where the habendum limits the estate granted to an estate less than fee simple. Bauman v. Stoller, 235 Ill. 491; Welch v. Welch, 183 Ill. 238.

A deed in the statutory form whereby grantor "conveys and warrants" land to grantee is a conveyance in fee simple to the grantee, his heirs and assigns, with certain covenants specified in the statute. Conveyances Act § 9 (J. & A. ¶ 2240); Palmer v. Cook, 159 Ill. 303.

CONVEY BY WARRANTY DEED.

An agreement for the sale of real estate providing that the vendor shall "convey by warranty deed" is a covenant to convey a merchantable title. Bear v. Fletcher, 252 Ill. 214; Gradle v. Warner, 140 Ill. 134. To the same effect see Morgan v. Smith, 11 Ill. 199.

CONVEYANCE.

Assignment of Mortgage.

The assignment of a mortgage on real estate is a conveyance. Turpin v. Ogle, 4 Ill. App. 619.

Mortgage.

A mortgage is a conveyance. People v. Roche, 124 Ill. 15.

Resolution Permitting Laying Sewer.

A resolution of canal commissioners giving permission to a city to lay a sewer across and under the canal is not a conveyance, but a permission to do what without the permission would have been unlawful. Chicago v. Green, 238 Ill. 277.

Deed in Escrow.

A deed delivered in escrow is not a conveyance. Grindle v. Grindle, 240 Ill. 149.

CONVEYANCING COUNSEL.

By Act 15 & 16 Vict. c. 80, § 41, the lord chancellor is empowered to appoint not less than six barristers, who have practiced as conveyancing counsel for ten years at least, to be conveyancing counsel of the court of chancery, and the opinion of any of them may be received and acted on by the court or by a judge at chambers in the investigation of the title to an estate, or in the settlement of a draft, conveyance, mortgage, etc. Daniell, Ch. Pr. 1046. By the judicature act of 1873 (section 77) they were transferred to the supreme court.

CONVEYING LOADS.

A buggy, carriage or automobile, when in use on the public streets of a city, if persons are carried therein, whether used for pleasure or hire, is "conveying loads," within the meaning of clause 96 of section 1 of article 5 of the Cities and Villages Act (J. & A. ¶ 1334[96]), relating to the powers of cities and villages. Harder v. Chicago, 235 Ill. 295.

CONVICTED.

Section 235 of the Criminal Code of 1845, now section 7 of division 2 of the Criminal Code (J. & A. ¶3972), relative to the disqualification of those "convicted" of certain crimes, refers to the judgment of the court in a criminal case on the verdict of guilty, and not merely to the verdict. Faunce v. People, 51 Ill. 314.

CONVICTION.

(Lat. convictio; from con, with, and vincere, to bind.) In practice. That legal proceeding of record which ascertains the guilt of the party, and upon which the sentence or judgment is founded. 7 Man. & G. 504.

Finding a person guilty by verdict of a jury. 1 Bish. Crim. Law, § 223.

A record of the summary proceedings upon any penal statute before one or more justices of the peace or other persons duly authorized, in a case where the offender has been convicted and sentenced. Holthouse.

The first of the definitions here given undoubtedly represents the accurate meaning of the term, and includes an ascertainment of the guilt of the party by an authorized magistrate in a summary way, or by confession of the party himself, as well as by verdict of a jury. The word is also used in each of the other senses given. It is said to be sometimes used to denote final judgment. Dwarr. St. (2d Ed.) 683. And a final judgment is usually held essential to conviction. 69 N. Y. 107; 99 Mass. 420.

Summary conviction is one which takes place before an authorized magistrate or inferior court, without the intervention of a common-law jury, or not according to the course of a common-law prosecution.

CONVINCE.

It is not proper to instruct a jury in a prosecution for murder that to prove the justification of self defense defendant must produce sufficient evidence to "convince" any reasonable person like situated, that he was in great danger of bodily harm, the word "convince" being too strong a word to be used in such a connection. People v. Williams, 240 Ill. 640.

CONVOY.

A naval force, under the command of an officer appointed by government, for the protection of merchant ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. bk. 1, c. 9, § 5; Park. Ins. 388.

Warranties are sometimes inserted in policies of insurance that the ship shall sail with convoy. To comply with this warranty, five things are essential: First, the ship must sail with the regular convoy appointed by the government; secondly, she must sail from the place of rendezvous appointed by the government; thirdly, the convoy must be for the voyage; fourthly, the ship insured must have sailing instructions; fifthly, she must depart and continue with the convoy until the end of the voyage, unless separated from it by necessity. Marsh. Ins. bk. 1, c 9. § 5.

COOL AND SWEET OATS.

A name given in the grain markets and among grain dealers to a certain grade of oats for which it was required only that the grain be sound and arrive at its destination "cool and sweet," regardless of whether it is damp, unclean, or light in weight, or even whether it is so defective and faulty that it will not fill the requirements of any grade. Gregg v. Wooliscroft, 52 Ill. App. 217.

COOLING TIME.

In criminal law. Time for passion to subside and reason to interpose. Cooling time destroys the effect of provocation, leaving homicide murder, the same as if no provocation had been given. 1 Russ. Crimes, 525; Whart. Hom. 179; 3 Grat. (Va.) 594.

CO-OPERATION.

Working together. Swisher v. I. C. R. Co., 182 Ill. 547.

CO-OPERATIVE.

Promoting the same end; helping; acting together to accomplish the same end. Hawthorn v. People, 109 Ill. 313.

CO-OPERATIVE CAUSE.

By the "co-operative cause" of an injury is meant that an act of the plaintiff directly contributing in conjunction with the acts of the defendant, to the injury. Chicago, B. & Q. R. Co. v. Johnson, 103 Ill. 520.

CO-OPERATIVE PLAN.

The expression "co-operative plan," used in the title of the act of 1883, requiring co-operative butter and cheese factories to give bonds, is synonymous with the expression "co-operative or dividend plan," used in section 1 of the same act (J. & A. ¶ 274), and both include an arrangement by which farmers bring milk to such a factory, where if is manufactured and sold as butter and cheese, the manufacturers retaining part of the price received, and returning the balance to those furnishing the milk. Hawthorn v. People, 109 Ill. 313.

COPARCENARY, ESTATES IN.

Estates of which two or more persons form one heir. 1 Washb. Real Prop. 414. The title to such an estate is always by

The title to such an estate is always by descent. The shares of the tenants need not be equal. The estate is rare in America, but sometimes exists. 3 Ind. 360; 4 Grat. (Va.) 16; 17 Mo. 13; 3 Md. 190. See Watkins, Conv. (Coventry Ed.) 145.

COPARTNERY.

In Scotch law. The contract of copartnership; a contract by which the several partners agree concerning the communication (sharing) of loss or gain, arising from the subject of the contract. Bell, Dict.

COPIA VERA.

In Scotch practice. A true copy; words written at the top of copies of instruments. 3 How. St. Tr. 427, 430, 432.

COPY.

Section 9 of the Forcible Entry and Detainer Act (J. & A. ¶5850), providing that the sheriff shall make service of the summons by delivering "a copy" to defendant is complied with although the copy served contains no copy of the seal impressed on the original process or any marks or characters to indicate that the original was sealed. Sietman v. Goeckner, 127 Ill. App. 69.

COPYRIGHT.

The exclusive right of multiplying copies. Frohman v. Ferris, 238 Ill. 441.

The exclusive privilege, secured according to certain legal forms, of printing, publishing, and vending copies of writings or drawings. 14 How. (U. S.) 530.

Literally the word "copyright" means the right to copy a work, or the right to the copy. Frohman v. Ferris, 238 Ill. 442.

CORAM JUDICE.

A cause is "coram judice" whenever a case is presented which brings into action the power of jurisdiction. Dilworth v. Curts, 139 Ill. 516; Kelly v. People, 115 Ill. 589; Schroeder v. Mercantile, etc., Co., 104 Ill. 76; Bush v. Hanson, 70 Ill. 482; Schmidt v. Pierce, 17 Ill. App. 524.

CORAM NOBIS.

A writ of error on a judgment in the king's bench is called a coram nobis, before us. So called because the record and proceedings were stated in the writ to remain "before us." 1 Archb. Prac. 234.

CORAM NON JUDICE.

Unless the court has jurisdiction both of the person and subject matter of the suit, its proceedings will be "coram non judice"—or, in other words, void. Klaproth v. Greenberg, 169 Ill. App. 479.

Acts done by a court which has no jurisdiction either over the person, the cause, or the process, are said to be coram non judice. 1 Conn. 40. Such acts have no validity. If an act is required to be done before a particular person, it would not be considered as done before him if he were asleep or non compos mentis. 5 Har. & J. (Md.) 42; 8 Cranch (U. S.) 9; Paine (U. S.) 55; 1 Prest. Conv. 266.

CORAM VOBIS.

A writ of error on judgments of other courts than the king's bench. 2 Tidd, Prac. 1056, 1137. So called because the record was stated to remain "before you," i. e., before the justices of king's bench.

In Modern Practice.

A writ of error for a review in a higher court than that alleged to have committed error.

CO-RESPONDENT.

In England, where a husband brings a suit against his wife charging her with adultery, the alleged adulterer must, as a rule, be made a party to the petition as a co-respondent. If the adultery is proved, the court may order him to pay damages to the husband. The term is sometimes applied in the United States to the alleged adulterer, though the practice of joining him does not obtain. Browne, Div. 143, 204; 20 & 21 Vict. c. 85, §§ 28, 33.

CORN LAWS.

Laws regulating the trade in breadstuffs. The object of corn laws is to secure a regular and steady supply of the great staples of food; and for this object the means adopted in different countries and at different times widely vary, sometimes involving restrictions or prohibition upon the export, and sometimes, in order to stimulate production, offering a bounty upon the export. Of the former character was the famous system of corn laws of England, initiated in 1773 by Mr. Burke, and repealed in 1846 under Sir Robert Peel.

CORNER.

A term used in the stock market, meaning cases where a purchaser succeeds in buying for future delivery more property of a given kind than is possible for the seller to deliver before the day of the maturity of the contract. Wright v. Cudahy, 168 Ill. 91. To the same effect see Samuels v. Oliver, 130 Ill. 84.

CORONER.

An officer whose principal duty it is to hold an inquisition, with the assistance of a jury, over the body of any person who may have come to a violent death, or who has died in prison.

It is his duty also, in case of the death of the sheriff, or his incapacity, or when a vacancy occurs in that office, to serve all the writs and processes which the sheriff is usually bound to serve. 20 Ga. 336; 11 Tex. 284; 14 Ala. (N. S.) 326; 10 Humph. (Tenn.) 346; 1 Sharswood, Bl. Comm. 349.

The chief justice of the king's bench is the sovereign or chief coroner of all England, though it is not to be understood that he performs the active duties of that office in any one county. 4 Coke, 57b; Bac. Abr.; 3 Comyn, Dig. 242; 5 Comyn, Dig. 212.

It is also his duty to inquire concerning shipwreck, and to find who has possession of the goods; concerning treasure trove, who are the finders, and where the property is. 1 Sharswood, Bl. Comm. 349.

The office has lost much of the honor which formerly appertained to it, but the duties are of great consequence to society, both for bringing murderers to punishment, and protecting innocent persons from accusation. It may often happen

that the imperfections of the early examination enable one who is undoubtedly a criminal to escape. It is proper, in most cases of homicide, to procure the examination to be made by a physician, and in many cases it is his duty. 4 Car. & P. 571.

CORPORATE AUTHORITIES.

Municipal Officers.

The expression "corporate authorities," used in the Constitution of 1870, means those municipal officers who are either directly elected by the people of the municipality, or appointed in some mode to which they have given their assent. Herschbach v. Kaskaskia, etc., District, 273 Ill. 70; Drainage Commissioners v. Rector, etc., District, 266 Ill. 539; Herschbach v. Kaskaskia, etc., District. 265 Ill. 398; Morgan v. Schusselle, 228 Ill. 112; Givins v. Chicago, 188 Ill. 360; People v. Knopf, 171 Ill. 200; Wilson v. Board of Trustees, 133 Ill. 461; Snell v. Chicago, 133 Ill. 440; Wetherell v. Devine, 116 Ill. 636; Cornell v. People, 107 Ill. 380; Hinze v. People, 92 Ill. 419; Wilcox v. People, 90 Ill. 203; Board of Directors v. Houston, 71 Ill. 321; Marshall v. Silliman, 61 Ill. 226; Gage v. Graham, 57 Ill. 146; Lovingston v. Wider, 53 Ill. 304; Hessler v. Drainage Commissioners, 53 Ill. 113; Harward v. St. Clair, etc., Co., f1 Ill. 136; People v. Chicago, 51 Ill. 30.

Town Supervisor and Assessor.

The town supervisor and assessor are "corporate authorities" within the meaning of section 9 of article 9 of the Constitution of 1870, relating to local improvements. Jones v. Lake View, 151 Ill. 677; People v. Gage, 83 Ill. 487; Hundley v. Commissioners, 67 Ill. 567.

Town Supervisor and Clerk.

A town supervisor and town clerk, acting together, are not "corporate authorities," within the meaning of section 5 of article 9 of the Constitution of 1848, relating to taxation, but merely a part of such corporate authorities, without power, of themselves, of taxation or to

bind the municipality in any way. Schaeffer v. Bonham, 95 Ill. 382; Williams v. Roberts, 88 Ill. 23; Marshall v. Silliman, 61 Ill. 225.

Electors.

Since under the system of township organization in this state there is no officer or board properly representing the corporate authorities of a town the electors are the "corporate authorities" of such town, within the meaning of section 9 of article 9 of the Constitution of 1870, relating to taxation, when assembled in town meeting. People v. Knopf, 171 Ill. 200; Kankakee v. Kankakee & I. R. Co., 115 Ill. 90. To the same effect see Williams v. Roberts, 88 Ill. 22, where the court construed the same expression in section 5 of article 9 of the Constitution of 1848.

Taxation.

The expression "corporate authorities," used in section 5 of article 9 of the Constitution of 1848, relating to taxation, does not refer to any particular class of corporate authorities, or preclude the legislature from creating any conceivable description of corporate authority, and endowing it, when created, with all the faculties and attributes of pre-existing corporate authorities. People v. Knopf, 171 Ill. 200; Wilson v. Board of Trustees, 133 Ill. 460; West Chicago, etc., Commissioners v. Western, 103 Ill. 40; People v. Salomon, 51 Ill. 50.

Parks Act.

Section 6 of the Act of 1869, relating to Lincoln Park, lying partly in North Chicago and partly in Lake View, providing that certain assessments be made by the supervisors and assessors, "corporate authorities" of such towns on the property benefited, is not complied with where the officials named met and jointly made the assessments in both towns, the officials of each town being not "corporate authorities" of the other town, within the meaning of the act, which contemplated that such assessments made in either of the towns be made by the corporate authorities of that town acting alone. Hund-

ley v. Commissioners of Lincoln Park, 67 Ill. 567.

Toll Road Company.

The expression "corporate authorities," used in section 9 of article 9 of the Constitution of 1870, relating to taxation, does not include a toll road company. Snell v. Chicago, 133 Ill. 441.

Local Improvements.

Neither the county court, or commissioners or juries selected in pursuance of an act of the legislature regarding drainage, are "corporate authorities" within the meaning of section 9 of article 9 of the Constitution of 1870, relating to local improvements. Updike v. Wright, 81 Ill. 54.

CORPORATE LIMITS.

In an action against a railroad company to recover for a mare killed at a crossing "in" a named city, where it was alleged that the train was running at a higher rate of speed than was lawful under an ordinance of such city, the "corporate limits," when collaterally involved, may be prima facie considered as embracing all territory over which the city in fact exercised jurisdiction for city purposes, including, where the city had power to extend its boundaries, land conveyed to the city which is presumed to have been annexed, although no annexation is in fact proved. Cleveland C. C. & St. L. Ry. Co. v. Dunn, 61 Ill. 228.

CORPORATE POWERS.

Section 1 of the act of 1905 (J. & A. ¶ 2526), regulating foreign corporations, and prescribing the conditions on which such corporation may exercise any of its "corporate powers" in the state, refers, by the quoted expression, to the franchises belonging to the corporation, or those powers specially conferred upon a corporation for the purpose of authorizing it to do or transact the particular business in which it intends to engage, together with those implied powers which are necessary to enable it to carry on that busi-

ness, but does not include the right to sue or any of those powers which are incident to the existence of every corporation, which arise from the mere act of incorporation, and do not depend for their existence upon the authority to transact or engage in any particular business. Alpena, etc., Co. v. Jenkins, 244 Ill. 361.

CORPORATE PURPOSES.

The expression "corporate purposes," used in paragraph 5 of section 1 of article 5 of the Cities and Villages Act (J. & A. ¶ 1334), relating to the powers of municipalities to borrow money, does not include that of providing a location for a state institution. Normal School v. Charleston, 271 Ill. 607; Livingston County v. Wieder, 64 Ill. 432.

The expression "corporate purposes," used in paragraph 5 of section 1 of article 5 of the Cities and Villages Act (J. & A. ¶ 1334), relating to the power of municipalities to borrow money, means such purposes as are germane to the objects and welfare of the municipality, or at least have a legitimate connection with those objects, and a manifest relation Normal School v. Charleston, thereto. 271 Ill. 607; Stone v. Chicago, 207 Ill. 503; Wetherell v. Devine, 116 Ill. 637; People v. Dupuyt, 71 Ill. 656; Livingston County v. Wieder, 64 Ill. 432. To the same effect see People v. Trustees of Schools, 78 Ill. 139.

Taxes whose purpose and object are the security of the public against public evils, and the promotion of the corporate welfare are for "corporate purpose," within the meaning of section 5 of the Constitution of 1848, relating to taxation, although individuals are benefited by such taxes, and although non-residents who are taxed for such purposes are not directly benefited. Taylor v. Thompson, 42 Ill. 14.

The expression "corporate purposes," used in section 5 of article 9 of the Constitution of 1848, refers to a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it. Quincy M. & P. R. Co. v. Morris, 84 Ill.

418; Chicago D. & V. R. Co. v. Smith, 62 Ill. 277; Taylor v. Thompson, 42 Ill. 13.

CORPORATION.

Defined.

An association of persons united in one body, having perpetual succession, vested with political rights conferred upon it by the authority creating it. Ford v. Chicago, etc., Ass'n, 155 Ill. 179. To the same effect see Union, etc., Co. v. Chicago, 199 Ill. 635.

An artificial being created by law, clothed with certain powers. Sellers v. Greer, 172 Ill. 553. To the same effect see Franklin, etc., Co. v. People, 200 Ill. 621; Holbrook v. Ford, 153 Ill. 645.

A body consisting of one or more persons established by law for certain specific purposes, with the capacity of succession (either perpetual or for a limited period) and other special privileges not possessed by individuals yet acting in many respects as an individual. People v. Goodhart, 248 Ill. 376.

A franchise belonging to the members of the corporation. Snell v. Chicago, 133 Ill. 430.

A political person capable of enjoying a variety of franchises. Chicago & W. I. R. Co. v. Dunbar, 95 Ill. 576.

An artificial being created by law, and composed of individuals who subsist as a body politic under a special denomination, with the capacity of perpetual succession, and of acting, within the scope of its charter, as a natural person. Fietsam v. Hay, 122 Ill. 295.

Chancellor Kent's Definition.

A franchise possessed by one or more individuals who subsist as a body politic, under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. Porter v. Rockford R. I. & St. L. R. Co., 76 Ill. 573.

Chief Justice Marshall's Definition.

An artificial being, invisible, intangible, and existing only in contemplation of law.

Being the mere creature of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. Mather v. City of Ottawa, 114 Ill. 664.

Classes.

Corporations are divided, generally, into public and private corporations. People v. Bergman, 253 Ill. 470.

Essence.

The faculty of a corporation is its organic life—its corporate existence, by which it is enabled to carry on business, which is derived from its charter of incorporation, its corporate franchise. Porter v. Rockford R. I. & St. L. R. Co., 76 Ill. 573.

The essence of a corporation consists in a capacity—1. To have perpetual succession under a special name and in an artificial form. 2 To take and grant property, contract obligations, sue and be sued by its corporate name as an individual; and 3. To receive and enjoy, in common, grants of privileges and immunities. Snell v. Chicago, 133 Ill. 430.

As Creature of Law.

A corporation is the mere creature of local law, and can have no legal existence beyond the limits of the state where created except by the authority of the sovereignty in which it wishes to act. State v. Illinois, etc., R. Co., 246 Ill. 209.

"Company" Synonymous.

The words "corporation" and "company" are commonly used as interchangeable terms. Goddard v. Chicago & N. W. Ry. Co., 202 Ill. 369.

De Facto.

The expression "de facto corporations" is generally used to denote associations exercising corporate powers under color of a more or less legal organization, and "a corporation de facto is in plain English a corporation in fact." It has been defined to be "a corporation from the fact of its acting as such, though not in law or of right a corporation." And also "one

where the proceedings for its organization are irregular or defective, when, by regularity of proceedings to incorporate, it might be one de jure." "It is an apparent corporate organization, asserted to be a corporation by its member, and actually acting as such, but lacking the creative flat of the law." 1 Fletcher Cyclopedia Corporations, 530.

It is essential to the existence of a corporation de facto that four conditions should exist: first, a valid law under which a corporation with the powers assumed might exist; second, a bona fide attempt to organize as a corporation under that law; third, a colorable or apparent compliance with the requirements of the law; fourth, user of the corporate powers. Gillette v. Aurora Rys. Co., 228 Ill. 276. To the same effect see Imperial, etc., Co. v. Board of Trade, 238 Ill. 108; Marshall v. Keach, 227 Ill. 43; American, etc., Co. v. Minnesota & N. W. R. Co., 157 Ill. 652; Bushnell v. Consolidated, etc., Co., 138 Ill. 73; Hudson v. Green Hill Seminary, 113 Ill. 626; Stanwood v. Sterling, etc., Co., 107 Ill. App. 573.

Where acts of user are relied on to prove the existence of a corporation de facto they must be such as unequivocally indicate a corporation, and could not be performed by a partnership. Stanwood v. Sterling, etc., Co., 107 Ill. App. 574.

Municipal.

The word "corporations" in the title of article 11 of the Constitution of 1870, relates to private corporations and not to local municipal corporations. Owners of Lands v. People, 113 Ill. 314.

The word "corporation," used in the Inheritance Tax Law imposing the tax, is broad enough to include municipal corporations of every character, and the language purports to apply to every corporation not in the statute afterwards exempted. The People v. Richardson, 269 III. 276.

Estoppel.

While as against the state a corporation cannot be created by the mere agreement or other act or omission of private persons, yet as between private litigants they may, by their agreements, admissions, or conduct, place themselves where they would not be permitted to deny the fact of the existence of the corporation. The corporation, under such circumstances, is often designated a corporation by estoppel. 1 Fletcher Cyclopedia Corporations, 660.

Pecuniary Profit.

Under the statutes of some states, separate provisions are made for the incorporation of corporations for "pecuniary profit" as distingushed from corporations "not for pecuniary profit." Within the meaning of such a provision, a corporation "for pecuniary profit" has been defined to be a corporation organized for the pecuniary profit of its stockholders or members. Fletcher Cyclopedia Corporations, 132.

Business.

A corporation organized for the purpose of conducting financial dealings, buying and selling, traffic in general and mercantile transactions is a business corporation. Usually the term applies to any banking, manufacturing and trading corporation, and insurance companies, whether fire, life or marine, have been held to be business corporations. Fletcher Cyclopedia Corporations, 131.

Aggregate.

An aggregate corporation is a corporation consisting of more than one member, and has been defined as "an artificial body of men, composed of divers individuals, the ligaments of which body are the franchises and liberties bestowed upon it, which bind and unite all into one, and in which consists the whole frame and essence of the corporation." 1 Fletcher Cyclopedia Corporations, 79.

Stock.

A stock corporation or joint stock corporation is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus of the corporation. 1 Fletcher Cyclopedia Corporations, 112.

State or Nation.

The word "corporation" in its extensive signification applies to a nation or state, and thus used, the United States, and the several states, or commonwealths, composing the Union may be termed "corporations." Accordingly, there are many decisions holding that the United States is a corporation or a body corporate, and it may, like other corporations, enter into contracts, take, hold, and convey property and sue or be sued, if it consents. In a like manner, the various states have been held to be corporations, and the same rule applies to territories. 1 Fletcher Cyclopedia Corporations, 110.

CORPORATOR.

A member of a corporation. Gulliver v. Roelle, 100 Ill. 147.

The word "corporators," used in section 11 of the Insurance Act (J. & A. ¶ 6273), relating to making the bylaws of insurance companies, means stockholders. Gulliver v. Roelle, 100 Ill. 152.

CORPUS DELICTI.

Criminal Cases Generally.

The proof of a charge in criminal cases involves the proof of two distinct propositions: First, that the act itself was done; and second, that it was done by the person or persons charged, and by none other—in other words, proof of a corpus delicti, and the identity of the person or persons. Dunn v. People, 158 Ill. 589; Carlton v. People, 150 Ill. 186.

Arson.

In arson the corpus delicti consists not only of the fact that a building has been burned but also of the fact that it has been wilfully fired by some responsible person. Carlton v. People, 150 Ill. 186.

Murder.

The corpus delicti in murder consists of two elements, viz., the fact of death and the criminal agency of another as the cause of death. People v. Hotz, 261 Ill. 255; Hoch v. People, 219 Ill. 284; Campbell v. People, 159 Ill. 19.

Receiving Stolen Goods.

The corpus delicti in a prosecution for receiving stolen goods is the fact that a larceny of the goods had been committed. Williams v. People, 101 Ill. 386; May v. People, 92 Ill. 345.

CORRECT DESCRIPTION.

The expression "correct description," used in section 4 of the Act of 1874, as amended by the Act of 1887, relating to the filing of statements by those claiming mechanics' liens, means such a description as identifies the individual subject intended to be designated. Springer v. Kroeschell, 161 Ill. 369.

CORRECT STATEMENT.

A document purporting to be a bill of exceptions which is but a recital of the proceedings of the trial without containing either the names of the witnesses or the evidence is not a "correct statement" of the facts appearing at the trial and all questions of law, within the meaning of section 23 of the Municipal Court Act (J. & A. ¶ 3335), relating to writs of error. Chicago v. Isaacson, 195 Ill. App. 376.

A document certified by a judge of the Municipal Court of Chicago containing merely the testimony of the witnesses in narrative form without a statement of the questions of law involved or the decisions of the court thereon is not a "correct statement" of facts appearing at the trial within the meaning of section 23 of the Municipal Court Act (J. & A. ¶ 3335), relating to writs of error. William E. Brown & Co. v. Hisgen, 195 Ill. App. 465.

CORRECT STENOGRAPHIC REPORT.

A document purporting to be a bill of exceptions which is but a recital of the proceedings of the trial without containing either the names of the witness or the evidence is not a "correct stenographic report" of the proceedings at the trial, within the meaning of section 23 of the Municipal Court Act (J. & A.

¶ 3335), relating to writs of error. Chicago v. Isaacson, 195 Ill. App. 376.

A statement certified by a judge of the Municipal Court of Chicago containing only the testimony of the witnesses in narrative form without a statement of the questions of law involved or the decisions of the court thereon is not a "correct stenographic report" of the trial within the meaning of section 23 of the Municipal Court Act relating to writs of error. William H. Brown & Co. v. Hisgen, 195 Ill. App. 465.

CORRUPTION.

Something against law. Chicago C. Ry. Co. v. Olis, 192 Ill. 516 (aff. 94 Ill. App. 324).

CORRUPTLY.

A witness who falsely testifies "wilfully and for the purpose of concealing the truth" brings himself within the meaning of "corruptly" testifying. Chicago C. Ry. Co. v. Olis, 192 Ill. 516 (aff. 94 Ill. App. 324).

An instruction that the jury may disregard the testimony of a witness found to have sworn, inter alia, "corruptly," refers, by the quoted word, to the motive of the witness, and not to the means by which his testimony is obtained. Chicago C. Ry. Co. v. Olis, 192 Ill. 516 (aff. 94 Ill. App. 324); Overtoom v. Chicago & E. I. R. Co., 181 Ill. 330.

COST OF PAVING.

A city ordinance granting a franchise to a street railway company to lay either one or two tracks in a street, and providing that if it laid but one track before the street was paved by special assessment, and afterwards laid another, it should pay to abutters a proportion of the "costs of paving," includes, by the quoted expression, not only the actual cost of paving the street, but also the cost of the work preliminary to laying the paving. Danville S. Ry. & Light Co. v. Mater, 116 Ill. App. 523.

COST AND EXPENSE.

A contract between a city and a water company whereby the city agreed to pay the "cost and expense" of installing certain hydrants means the actual cost and expense of such hydrants, and not what they were reasonably worth, the term "cost" meaning, ex vi termini, actual cost, and the term "expense," actual expense or outlay. Bull v. Quincy, 155 Ill. 572.

COSTS.

Defined.

The expenses of a suit which may be recovered by law from the losing party. Chase v. DeWolf, 69 Ill. 49.

An allowance to a party for expenses incurred in conducting his suit. Galpin v. Chicago, 159 Ill. App. 166.

"Fees," "Charges" Compared.

While "costs" and "fees" are essentially different, the word "costs" is sometimes used where either the word "fees" or the word "charges" would have been more accurate. Galpin v. Chicago, 159 Ill. App. 166.

Municipal Court Act.

The word "costs," used in section 57 of the Municipal Court Act (J. & A. ¶ 3374), in connection with preliminary proceedings in the Municipal Court where final judgment of conviction is not rendered, is used tentatively or in place of "fees" or "charges," which would become "costs," within the meaning of the section, when a final judgment of conviction was rendered, but not otherwise. Galpin v. Chicago, 159 Ill. App. 167.

Receiver's Compensation and Solicitor's Fees.

The word "costs," used in section 18 of the Costs Act (J. & A. ¶ 2732), relating to costs on dismissal of a bill in chancery, includes the compensation of a receiver and his solicitor's fees. Burrows v. Merrifield, 243 Ill. 364; Link Belt, etc., Co. v. Hughes, 195 Ill. 418; McAnrow v. Martin, 183 Ill. 474; Highley v. Deane, 168 Ill. 272.

CO-SURETY.

The fact that section 9 of the Dramshop Act (J. & A. ¶ 4609), makes the owner of a building leasing it for the sale of liquor jointly liable with the liquor dealer for damages under the section does not make the lessor a co-surety with the surety on the dealer's bond so as to enable such surety to claim contribution from the owner when held liable for breach of condition of the bond. Wanack v. Michels, 215 Ill. 95.

COTTON FACTORY.

The expression "cotton factory," used in a policy of fire insurance, includes not only the carding and spinning, but also the machinery, fuel, and the preparation of the goods for market. American, etc., Co. v. Brighton, etc., Co., 125 Ill. 139.

COUNTERSIGN.

To sign what has already been signed by a superior; to authenticate by an additional signature. Gurnee v. Chicago, 40 Ill. 167.

COUNTY.

A local municipal corporation created for convenience in police arrangements. Dennis v. Maynard, 15 Ill. 480.

A public corporation, which exists only for public purposes. Chicago v. Knobel, 232 Ill. 116.

A public corporation, which exists only for public purposes connected with the administration of the state government, and it and its revenues are alike, where no express constitutional restriction is found to the contrary, subject to legislative control. Raymond v. Hartford, etc., Co., 196 Ill. 343; Heffner v. Cass & Morgan Counties, 193 Ill. 449; Chicago v. Manhattan, etc., Co., 178 Ill. 380; Wetherell v. Devine, 116 Ill. 640; Marion County v. Lear, 108 Ill. 349; Sangamon County v. Springfield, 63 Ill. 71.

A political subdivision of the territory of the state, organized for the convenient exercise, locally, of such powers of the government as may be delegated to it. Edwardsville v. Madison County, 251 Ill. 267; Chicago v. Knobel, 232 Ill. 116; Heffner v. Cass & Morgan Counties, 193 Ill. 448; Wetherell v. Devine, 116 Ill. 642; Harris v. Board of Supervisors, 105 Ill. 451.

Local subdivisions of the state, established by the sovereign power of the state, clothed with but few corporate powers, and these not of a private, but rather of a governmental character, relating to the support of the poor, the making of public highways and the general administration of justice within their respective boundaries. Hollenbeck v. Winnebago County, 95 Ill. 162.

An involuntary political or civil division of the state, created by statute to aid in the administration of government, in its very character and purposes public, and a governmental agency or auxiliary rather than a corporation. People v. Grover, 258 Ill. 127; People v. Martin, 178 Ill. 620. For substantially similar definitions see Perkins v. Commissioners, 271 Ill. 459; Mercer County v. Wolff, 237 Ill. 77; Millikin v. Edgar County, 142 Ill. 531; Scates v. King, 110 Ill. 466; Symonds v. Clay County, 71 Ill. 357; Coles v. Madison County, 1 Ill. 160; Henry County v. Stevens, 120 Ill. App. 346; Strodtman v. Menard County, 56 Ill. App. 125.

Counties are involuntary corporations, organized as political subdivisions of the state for governmental purposes. While, to a certain extent, they are invested with corporate powers, such as holding property and making contracts for county purposes, because of their imperfect powers they are not corporations in the proper sense, but are properly designated as quasi corporations. 1 Fletcher Cyclopedia Corporations, 113.

A county is a quasi municipal corporation. Stevens v. St. Mary's, etc., School, 144 Ill. 344; Scates v. King, 110 Ill. 466; Symonds v. Clay County, 71 Ill. 357; Perry v. Kinnear, 42 Ill. 163; Hedges v. Madison County, 6 Ill. 571.

The word "county," used in section 11 of article 5 of the Constitution of 1848, providing that no person shall be eligible to the office of judge of any court unless,

inter alia, he shall for two years next preceding his election, have resided in the "division, circuit or county" for which he is elected, is only applicable to county judges. People v. Wilson, 15 Ill. 390.

COUNTY AFFAIRS.

Those relating to the county in its organic and corporate capacity and included within its governmental or corporate powers. People v. Election Comrs., 221 Ill. 24; Pettibone v. West Chicago, etc., Commissioners, 215 Ill. 332.

COUNTY BOARD.

The expression "county board," used in sections 29 and 30 of the Elections Act (J. & A. ¶¶ 4754, 4755), refers to the governing bodies of all counties of the state, whether such bodies are composed of supervisors or county commissioners. Rexroth v. Schein, 206 Ill. 90.

The expression "county board," used in section 10 of article 10 of the Constitution of 1870, is not to be confined to any one particular body of persons, but refers to the body to which is entrusted the transaction of the county business, and embraces as well county courts as boards of supervisors and courts of county commissioners. Hughes v. People, 82 Ill. 79; Broadwell v. People, 76 Ill. 558.

COUNTY CLERK.

The "county clerk" and the "clerk of the county court" are distinct offices, although filled by the same person. Mc-Craney v. Glos, 222 Ill. 630; Drennen v. People, 222 Ill. 593; Glos v. Hanford, 212 Ill. 265; Glos v. Woodard, 202 Ill. 484; McChesney v. People, 174 Ill. 50; Tucker v. People, 122 Ill. 591.

COUNTY CORPORATE.

A city or town, with more or less territory annexed, constituting a county by itself. 1 Bl. Comm. 120. Something similar to this exists in this country in regard to Philadelphia, New York, and

Boston. They differ in no material points from other counties.

COUNTY COURT.

The expression "county court," used in section 21 of the Act of 1849, now section 113 of the Act of 1874 (J. & A. ¶ 3239), relating to the attendance of the sheriff on sittings of county courts, applies only to the sittings of such court for the transaction of county business, and does not include its sittings for probate business. St. Clair County v. Irwin, 15 Ill. 56.

In English Law.

Tribunals of limited jurisdiction, originally established under St. 9 & 10 Vict. c. 95. They had, at their institution, jurisdiction of actions for the recovery of debts, damages, and demands, legacies, and balances of partnership accounts, where the sum sued for did not exceed twenty pounds. It has since been much extended, especially in cases where the parties give assent in writing. They are chiefly regulated by St. 9 & 10 Vict. c. 95; 12 & 13 Vict. c. 101; 13 & 14 Vict. c. 61; 15 & 16 Vict. c. 54; 19 & 20 Vict. c. 108; 21 & 22 Vict. c. 74. See 3 Sharswood, Bl. Comm. 76.

Tribunals of limited jurisdiction in the county of Middlesex, established under St. 22 Geo. II. c. 33.

These courts are held once a month at least in every hundred in the county of Middlesex, by the county clerk and a jury of twelve suitors, or freeholders, summoned for that purpose. They examine the parties under oath, and make such order in the case as they shall judge agreeable to conscience. 3 Steph. Comm. 452; 3 Bl. Comm. 83.

The county court was a court of great antiquity, and originally of much splendor and importance. It was a court of limited jurisdiction incident to the jurisdiction of the sheriff, in which, however, the suitors were really the judges, while the sheriff was a ministerial officer. It had jurisdiction of personal actions for the recovery of small debts, and of many

real actions prior to their abolition. By virtue of a justicies, it might entertain jurisdiction of personal actions to any amount. At this court, all proclamations of laws, outlawries, etc., were made, and the elections of such officers as sheriffs, coroners, and others took place. In the time of Edward I. it was held by the earl and bishop, and was of great dignity. It was superseded by the courts of requests to a great degree; and these, in turn, gave way to the new county courts, as they are sometimes called distinctively.

COUNTY JUDGE.

The expressions "county judge" and "judge of the county court," used in article 1 of the Cities and Villages Act (J. & A. ¶¶ 1271 et seq.), relating to the organization of cities and villages, and in article 11 of the same act (J. & A. ¶¶ 1518 et seq.), relating to the organization of villages, are used synonymously and interchangeably. People v. Shaw, 253 Ill. 600.

COUNTY OFFICER.

Defined.

An officer who may be voted for by the electors of a county, only. Franklin v. Westfall, 273 Ill. 404.

One whose duties and powers are coextensive with the county. People v. Evans, 247 Ill. 555.

Probation Officers Excluded.

A tax for the salaries of "county officers" is invalid in so far as it is for the purpose of paying the salaries of probation officers appointed under section 14 of the Act of 1913 (Cal. St. Ill. Sup. ¶ 3416 [15]), known as the Mothers Pension Act, by section 9 of the Act of 1911 (J. & A. ¶ 4180), relating to the probation system, and by section 6 of the Act of 1899 (J. & A. ¶ 3391), known as the Juvenile Court Act, such probation officers being not county officers, but officers of the courts appointing them. People v. Chicago, B. & Q. R. Co., 273 Ill. 112.

Includes State's Attorney.

The expression "county officers," used in section 10 of article 10 of the Constitution of 1870, relating to the compensation of county officers, includes the state's attorney. Cook County v. Healy, 222 Ill. 316.

COUNTY PALATINE.

A county possessing certain peculiar privileges. The owners of such counties have kingly powers within their jurisdictions, as the pardoning crimes, issuing writs, etc. These counties have either passed into the hands of the crown, or have lost their peculiar privileges to a great degree. 1 Bl. Comm. 117; 4 Bl. Comm. 431. The name is derived from palatium (palace), and was applied because the earls anciently had palaces, and maintained regal state. Cowell; Spelman; 1 Bl. Comm. 117.

COUNTY PURPOSES.

The building of court houses, jails, poor houses, the opening and keeping in repair of common highways, and the erection and maintenance of bridges are county purposes, for which the people of the county may be taxed, but the erection of hotels, mercantile, manufacturing, trading and banking houses, cannot, in any reasonable or just sense, be so regarded. Mather v. Ottawa, 114 Ill. 665; Johnson v. Stark County, 24 Ill. 88.

COUNTY RATE.

An imposition levied on the occupiers of lands in England, and applied to many miscellaneous purposes, among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. Wharton.

COUNTY SESSIONS.

In England. The general quarter sessions of the peace for each county, which

are held four times a year. Wharton; Warren, Law Stud. 367.

COUNTY TAX.

A tax which a county is authorized to levy is known and designated as a "county tax," although it may include an item for road and bridge purposes. People v. Illinois C. R. Co., 256 Ill. 336.

COUPON BONDS.

"Coupon bonds" are the ordinary form of corporate bond in this country. They are payable to bearer and are provided with interest warrants, called "coupons," for each installment of interest, also payable to bearer, which, when actually detached, are negotiable and payable to bearer. 2 Fletcher Cyclopedia Corporations, 1919.

COUPONS.

Those parts of a commercial instrument which are to be cut, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payor.

COUR DE CASSATION.

In French law. The supreme judicial tribunal and court of final resort. It is composed of forty-nine counsellors and judges, including a first president and three presidents of chamber, an attorney general and six advocates general, one head registrar and four deputy registrars appointed by the head registrar, and a certain number of ushers. Jones, Fr. Bar, 22; Guyot, Rep. Univ.

The jurisdiction of the court is only on error shown in the proceedings of the lower courts in matters of law, taking the facts as found by the lower courts.

COURSE.

The direction of a line with reference to a meridian. Where there are no monuments, the land must be bounded by the courses and distances mentioned in the patent or deed. 4 Wheat. (U. S.) 444; 3 Pet. (U. S.) 96; 3 Murph. (N. C.) 82; 2 Har. & J. (Md.) 267; 5 Har. & J. (Md.) 254. When the lines are actually marked, they must be adhered to, though they vary from the course mentioned in the deeds. 2 Overt. (Tenn.) 304; 7 Wheat. (U. S.) 7. See 3 Call (Va.) 239; 7 T. B. Mon. (Ky.) 333. See "Boundary."

COURSE OF HIS EMPLOYMENT.

What Constitutes.

Within the meaning of the rule as to the liability of a principal for the acts of an agent, such acts are within the "course of his employment" when the agent is endeavoring to promote his principal's business within the scope of the actual or apparent authority conferred upon him for that purpose. Rosenberg v. Underwriters Salvage Co., 190 Ill. App. 65; Gallagher v. Singer, etc., Co., 177 Ill. App. 239.

Workmen's Compensation Act.

An injury occurs in the course of the employment, within the Workmen's Compensation Act, when it occurs within the period of employment, at a place where the employee may reasonably be, and while he is reasonably fulfilling the duties of employment or engaged in something incidental to it. Eugene Dietzen Co. v. Industrial Board of Illinois, 279 Iil. 11; International Harvester Co. v. Industrial Board of Illinois, 282 Iil. 489.

In determining whether an injury occurred in the course of the employment within the Illinois Compensation Act, the exact time when the earning of the wages commenced and ended is not conclusive of the question, and a reasonable period must be allowed before and after such time where an employee is injured at a place where he might then reasonably expect to be and performing the duties of employment. Mueller Constr. Co. v. Industrial Board of Illinois, 283 Ill. 148.

An injury to an employee while going to and from his employment may be such as to be regarded as occurring within the course of the employment. Friebel v. Chicago City R. Co., 280 Ill. 76.

COURSE OF THE VOYAGE.

By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185.

COURT.

(Lat. cohors, an inclosure.) A body in the government to which the public administration of justice is delegated. A tribunal established for the administration of justice. 18 Mo. 570. The presence of a sufficient number of the members of a judicial body regularly convened in an authorized place at an appointed time, engaged in the performance of its functions. It is to be observed, however, that a court does not come into being when it convenes, or pass out of existence when it adjourns. The idea of place in the Latin word from which the term is derived is given too great prominence in some definitions, notably in that of Blackstone, that a court is "a place where justice is judicially administered" (3 Bl. Comm. 23); a court being a tribunal rather than a place. The term is also used to signify the judge or judges themselves when duly convened, in contradistinction from the jury, and also in contradistinction from the judge or judges when not convened as a court. It has been said that in every court there must be three constituent parts,—the plaintiff, the defendant, and the judicial power (actor, reus, and judex) (3 Bl. Comm. 25); but it is manifestly not essential to the idea of a court that it have a cause pending before it. See 1 Abb. Mich. Prac. § 2.

Verb-Common Meaning.

It is universally understood that the word "court," used as a verb, imports

those attentions which a man pays to a woman when he manifests an intention to gain her affections. Greenup v. Stoker, 8 Ill. 211.

As a Space.

An open, unoccupied space, other than a yard, on the same lot with a tenement house. Municipal Code of Chicago, § 605; Kristan v. Nepil, 150 Ill. App. 295.

As Political Agency.

A court is a political agency—a mere legal entity—established under the constitution for governmental purposes. Bowman v. Venice & C. Ry. Co., 102 Ill. 468; U. S., etc., Co. v. Shattuck, 57 Ill. App. 384.

A place where justice is administered judicially, at which the person authorized to administer justice in a judicial capacity must be present. Haines v. Cearlock, 184 Ill. 99. To a similar effect see Mascall v. Commissioners, 122 Ill. 623.

A body in the government organized for the public administration of justice at the time and place prescribed by law; an incorporeal being, which requires for its existence the presence of the judge. People v. Opel, 188 III. 203.

That body in the government to which the public administration of justice is delegated. Tissier v. Rhein, 130 Ill. 114.

An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands and secure due order in its proceedings. Moline v. Chicago, B. & Q. R. R. Co., 262 Ill. 56.

Scope of Term.

The word "court," as used in the rule that parties to a suit and their witnesses are protected while going to and returning from a court, is to be given a liberal construction, and includes all cases where the party or witness attends in any matter pending before a lawful tribunal hav-

ing jurisdiction of the cause, such as an arbitration under a rule of court, the execution of a writ of inquiry, a bankrupt and his witnesses attending before the commissioner on notice, a witness attending before a magistrate to give a deposition under an order of court or before a master to give or take testimony under an order of court, such officer or other person being the mere instrument of the court, and the evidence in effect being taken before the court. Greer v. Young, 120 Ill. 189.

The province of a court is to declare the law, and to apply it to controversies before them by some appropriate proceeding. Dodge v. Cole, 97 Ill. 356.

- Lord Coke's Definition.

The tribunal by which justice is judicially administered. Mascall v. Commissioners, 122 Ill. 623.

- Clerk's Office.

The clerk's office is part of the court. Knox County v. Arms, 22 Ill. 179.

- Foreign Notary Taking Depositions.

A notary in one state taking depositions to be used before the courts of another state is not within the meaning of the word "court" as used in the rule that parties to a case and their witnesses are protected from arrest while going to and returning from a court. Greer v. Young, 120 Ill. 190.

- Grand Jury.

The grand jury is a necessary constituent part of every court having general criminal jurisdiction. People v. McCauley, 256 Ill. 508. To the same effect see Ferriman v. People, 128 Ill. App. 233.

--- Judge.

The "court," in contemplation of law, has an existence separate from the judges presiding over it. Moline v. Chicago, B. & Q. R. Co., 262 Ill. 56; Hartshorn v. Illinois V. Ry. Co., 216 Ill. 404; Mascall v. Commissioners, 122 Ill. 623; Bowman v. Venice & C. Ry. Co., 102 Ill. 468; U. S., etc., Co. v. Shattuck, 57 Ill. App. 384; Feltenstein v. Stein, 51 Ill. App. 427.

The judge of a court, while presiding or holding court, is by common usage referred to as the court, especially where referred to in contra-distinction to the jury. Moline v. Chicago, B. & Q. R. Co., 262 Ill. 56; Mascall v. Commissioners, 122 Ill. 623.

- Justice's Court.

The place where a justice of the peace exercises his power is a court. People v. Wilson, 15 Ill. 391.

Justices of the peace, while engaged in the performance of their public duties as judicial officers, are "courts" within the meaning of section 29 of article 6 of the Constitution of 1870, requiring that all laws relating to the courts shall be general and of uniform operation. Tissier v. Rhein, 130 Ill. 114.

- Petit Jury.

The petit jury is an integral part of a court in all cases where, at common law, there was the right of trial by jury. Mascall v. Commissioners, 122 Ill. 623.

- State Public Utilities Commission.

The State Public Utilities Commission is not a court. People v. Peoria & P. U. Ry. Co., 273 Ill. 444.

COURT BARON.

A domestic court, incident to every manor, to be held by the steward within the manor, for redressing misdemeanors and nuisances therein, and for settling disputes among the tenants relating to It is not a court of record. Freeholders' court baron is one held before the freeholders who owe suit and service to the manor. It is the court baron proper. These courts have now fallen into great disuse in England, and provision is made by St. 9 & 10 Vict. c. 95, § 14, enabling the lord of any manor which has a court in which debts or demands are recoverable to surrender to the crown the right of holding such court, and, upon such surrender, the court is discontinued, and the right of holding it ceases. In the state of New York, such courts were held while the state was a province. See charters in Bolton's History of New Chester. The court has derived its name from the fact that it was the court of the baron or lord of the manor (3 Sharswood, Bl. Comm. 33, note. See Fleta, lib. 2, c. 53), though it is explained by some as being the court of the freeholders, who were in some instances called barons (Co. Litt. 58a).

COURT FOR CROWN CASES RESERVED.

The court created by St. 11 & 12 Vict. c. 78, for the decision of questions of law arising on the trial of a person convicted of treason, felony, or misdemeanor (e. g., at the central criminal court, the assizes, or quarter sessions), and reserved by the judge or justices at the trial, for the consideration of the court. For this purpose, the judge or justices state and sign a case setting forth the question and the facts out of which it arises. Archb. Crim. Pl. 191. The jurisdiction is now exercised by the judges of the high court of justice, or five of them, at the least. Their decision is final. Judicature Act 1873, §§ 47, 100.

COURT FOR DIVORCE AND MAT-RIMONIAL CAUSES.

In English law. A court which has the jurisdiction formerly exercised by the ecclesiastical courts in respect of divorces a mensa et thoro, suits of nullity of marriage, suits of jactitation of marriage, suits for restitution of conjugal rights, and all suits, causes, and matters matrimonial. It consists of the lord chancellor and the justices of the queen's bench, the common pleas, the exchequer, and the judge of the court of probate, who is entitled "Judge ordinary." The judge ordinary exercises all the powers of the court, except petitions for dissolving or annuling marriages, and applications for new trials of matters of fact, bills of exception, special verdict and special cases, for hearing which excepted cases he must be joined by two of the other judges. Provision is made for his absence by authorizing the lord chancellor to appoint one of certain judicial persons to act in such absence. Juries may be summoned to try matters of fact, and such trials are conducted in the same manner as jury trials at common law. See St. 20 & 21 Vict. c. 85; St. 21 & 22 Vict. c. 108; St. 22 & 23 Vict. c. 61.

COURT FOR THE RELIEF OF IN-SOLVENT DEBTORS IN ENGLAND.

In English law. A local court which has its sittings in London only, which receives the petitions of insolvent debtors, and decides upon the question of granting a discharge. It is held by the commissioners of bankruptcy, and its decisions, if in favor of a discharge, are not reversible by any other tribunal. See 3 Steph. Comm. 426; 4 Steph. Comm. 287, 288.

COURT HAND.

In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity, and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability. Sir James Burrows, speaking of St. 4 Geo. II. c. 26, thus forcibly contrasts this style of writing with that by which it was superseded: "A statute now took place for converting them [common-law pleadings] from a fixed dead language to a fluctuating living one, and for altering the strong, solid, compact hand, calculated to last for ages, wherein they were used to be written, into a species of handwriting so weak, filmsy and diffuse that many a modern record will hardly outlive its writer, and few perhaps will survive much above a century." 1 Burrows, pref. Sir William Blackstone mentions another disadvantage attending the disuse of the old hand, "whereby the reading of any record that is fifty years old is now become the object of science, and calls for the help of an antiquarian." 3 Bl. Comm. 323.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of clerkship, as it was called. Two sizes of it were employed,—a large and a small hand; the former, called "great court hand," being used for initial words or clauses, the placita of records, etc. Towns, Pl. passim; Instr. Cler. passim.

COURT HOUSE.

A building used for the holding of sessions of court, whether such use be permanent or temporary. 65 Ga. 165.

COURT LEET.

(Law Lat. curia letae, the court of the leet.) A court of record in England, held once or twice in every year within a particular hundred, lordship, or manor, before the steward of the leet, for the preservation of the peace, and the punishment of all trivial misdemeanors. Kitch. Cts. Its original intent was to view the frank pledges,-that is, the freemen of the liberty who anciently were all mutually pledges for the good behavior of each other,-and hence it was called, by the Anglo-Normans, the "view of frank pledge," visus franci plegii. 4 Bl. Comm. 273; Spelman, voc. "Leta;" 4 Inst. 261; Mirr. c. 1, § 10; 2 Hawk. P. C. 72; 1 Crabb, Real Prop. 495; § 637 et seq.; Tomlin. It has, however, latterly fallen into almost total desuetude; its business having, for the most part, gradually devolved upon the quarter sessions. Steph. Comm. 340.

COURT-MARTIAL.

A military or naval tribunal, which has jurisdiction of offenses against the law of the service, military or naval, in which the offender is engaged.

The original tribunal, for which courtsmartial are a partial substitute, was the court of chivalry (q. v.). These courts

exist and have their jurisdiction by virtue of the military law, the court being constituted and empowered to act in each instance by authority from a commanding officer. The general principles applicable to courts-martial in the army and navy are essentially the same, and, for consideration of the exact distinctions between them, reference must be had to the works of writers upon these subjects. Courtsmartial for the regulation of the militia are held in the various states under local statutes, which resemble in their main features those provided for in the army of the United States; and when in actual service, the militia, like the regular troops, are subject to courts-martial, composed, however, of militia officers.

As to their constitution and jurisdiction, these courts may belong to one of the following classes:

- (1) General, which have jurisdiction over every species of offense of which courts-martial have jurisdiction. They are to be composed in the United States of not less than five nor more than thirteen commissioned officers of suitable rank, according to the exigencies of the service, and in England of not less than thirteen commissioned officers, except in special cases, and usually do consist of more than that number.
- (2) Regimental, which have jurisdiction of some minor offenses occurring in a regiment or corps. They consist in the United States of not less than three commissioned officers; in England, of not less than five commissioned officers, when that number can be assembled without detriment to the service, and of not less than three, in any event. The jurisdiction of this class of courts-martial extends only to offenses less than capital committed by those below the rank of commissioned officers, and their decision is subject to revision by the commanding officer of the division, regiment, or detachment, by the officer who appointed them, or by certain superior officers.
- (3) Garrison, which have jurisdiction of some minor offenses occurring in a garrison, fort, or barracks. They are of the same constitution as to number and qualifications of members as regimental

courts-martial. Their limits of jurisdiction in degree are the same, and their decisions are in a similar manner subject to revision.

COURT OF ANCIENT DEMESNE.

In English law. A court of peculiar constitution, held by a bailiff appointed by the king, in which alone the tenants of the king's demesne could be impleaded. 2 Burrows, 1046; 1 Spence, Eq. Jur. 100; 2 Sharswood, Bl. Comm. 99; 1 Report Eng. Real Prop. Comm. 28, 29; 3 Steph. Comm. 211, 212.

COURT OF ARCHES.

(Law Lat. curia de arcubus.) In English ecclesiastical law. A court of appeal, and of original jurisdiction.

The most ancient consistory court belonging to the archbishop of Canterbury for the trial of spiritual causes, the judge of which is called the "dean of the arches," because he anciently held his court in the church of St. Mary le Bow (Sancta Maria de Arcubus,—literally, "St. Mary of the Arches"), so named from the style of its steeple, which is raised upon pillars built archwise, like so many bent bows. Termes de la Ley. It is now held, as are also the other spiritual courts, in the hall belonging to the College of Civilians, commonly called "Doctors' Commons."

Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London; but, the office of dean of the arches having been for a long time united with that of the archbishop's principal official, the judge of the arches, in right of such added office, receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. 3 Bl. Comm. 64; 3 Steph. Comm. 431; Wharton, "Arches Court."

COURT OF ATTACHMENTS.

The lowest of the three courts held in the forests. The highest court is called "Justice of Eyre's Seat;" the middle, the "Sweinmote;" and the lowest, the "Attachment." Sharswood, For. Laws, 90, 99; Wharton, "Attachment of the Forests."

The court of attachments is to be held before the verderors of the forest once in every forty days, to inquire of all offenders against vert and venison, by receiving from the foresters or keepers their attachments or presentments de viridi et venatione, enrolling them, and certifying them under their seals to the court of justice seat, or sweinmote; for this court can only inquire of offenders; it cannot convict them. 3 Bl. Comm. 439; Carta de Foresta, 9 Hen. III. c. 8; Termes de la Ley.

COURT OF AUDIENCE.

Ecclesiastical courts, in which the primates once exercised in person a considerable part of their jurisdiction. They seen to be now obsolete, or at least to be only used on the rare occurrence of the trial of a bishop. Phillim. Ecc. Law, 1201, 1204.

COURT OF AUGMENTATION.

A court established by 27 Hen. VIII. c. 27, for managing the revenues and possessions of all monasteries whose income was under two hundred pounds a year (which by an act of parliament of the same session had been given to the king), and for determining suits relating thereto. It was called the "Court of the Augmentations of the Revenues of the King's Crown," from the augmentation of the revenues of the crown derived from the suppression of the monasteries, and was a court of record, with one great seal and one privy seal; the officers being a chancellor, who had the great seal, a treasurer, a king's attorney and solicitor, ten auditors, seventeen receivers, with clerk, usher, etc.

COURT OF CHIVALRY.

In English law. An ancient military court, possessing both civil and criminal jurisdiction touching matters of arms and deeds of war.

As a court of civil jurisdiction, it was held by the lord high constable of England while that office was filled, and the earl marshal, jointly, and subsequently to the attainder of Stafford, duke of Buckingham, in the time of Henry VIII., by the earl marshal alone. It had cognizance, by St. 13 Rich. II. c. 2, "of contracts and other matters touching deeds of arms and war, as well out of the realm as within it." This jurisdiction was of importance while the English kings held territories in France.

As a court of criminal jurisdiction, it could be held only by the lord high constable and earl marshal jointly. It had jurisdiction over "pleas of life and member arising in matters of arms and deeds of war, as well out of the realm as within it."

It was not a court of record, could neither fine nor imprison (7 Mod. 127), and has fallen entirely into disuse (3 Sharswood, Bl. Comm. 68; 4 Sharswood, Bl. Comm. 268).

COURT OF CLAIMS.

This court, as originally created by the statute of February 24, 1855 (10 St. at Large, 12), consisted of three judges, with jurisdiction to hear and determine all claims founded upon any law of congress, or regulation of an executive department, or upon any contract, express or implied, with the government of the United States, and of all claims which might be referred to it by either house of congress.

The court had no power to render a judgment which it could execute, but reported to congress the cases upon which it had finally acted, the material facts it found established by the evidence, with its opinion in the case, and reasons therefor, or what was equivalent to an opinion in the nature of a judgment as to the rights of the parties upon the facts proved or admitted in the case. Bright. Dig. 198-200.

By an amendatory act of March 3, 1863, two judges were added. In addition to the jurisdiction previously conferred upon the court, it is now author-

ized to take jurisdiction of all set-offs, counterclaims, claims for damages, liquidated or unliquidated, or other demands whatsoever on the part of the government against any person making claim against the government in said court. If the judgment of the court shall be in favor of the government, it shall be filed in the office of the clerk of the proper district or circuit court of the United States, and shall ipso facto become and be a judgment of such district or circuit court, and shall be enforced in like manner as other judgments are. If the judgment shall be in favor of the claimant, the sum thereby found due to the claimant shall be paid out of any general appropriation made by law for the payment of private claims, on presentation to the secretary of the treasury of a duly-certified copy of said judgment.

Proceedings in the court of claims originate by petition filed; and testimony used in the hearing and determination of claims is taken by commissioners who are appointed by the court for the purpose.

COURT OF COMMON PLEAS.

In English Law.

One of the three superior courts of common law at Westminster.

This court, which is sometimes called, also, bancus communis, bancus, and common bench, is a branch of the aula regis, and was at its institution ambulatory, following the household of the king. In the eleventh clause of Magna Charta, A. D. 1214, it is provided that it shall be held at some fixed place, which is Westminster. The establishment of this court at Westminster, and the consequent construction of the Inns of Court, and gathering together of the common-law lawyers. enabled the law itself to withstand the attacks of the canonists and civilians. It derived its name from the fact that the causes of common people were heard It had exclusive jurisdiction of there. real actions as long as those actions were in use, and had also an extensive, and, for a long time, exclusive, jurisdiction of all actions between subjects. This latter

croached upon by the king's bench and exchequer, with which it now has a concurrent jurisdiction in many matters. Formerly none but serjeants at law were admitted to practice before this court in banc (6 Bing. [N. C.] 235), but by St. 6 & 7 Vict. c. 18, § 61, and St. 9 & 10 Vict. c. 54, all barristers at law have the right of "practice, pleading, and audience."

It consists of one chief and four puisne or associate justices.

Appeals formerly lay from this court to the king's bench; but, by the statutes of 11 Geo. IV. and 1 Wm. IV. c. 70, appeals for errors in law are now taken to the judges of the king's bench and barons of exchequer in the exchequer chambers, from whose judgment an appeal lies only to the house of lords. 3 Sharswood, Bl. Comm. 40.

It has a civil, common-law jurisdiction, concurrent with the king's bench and exchequer, of personal actions and actions of ejectment, and a peculiar or exclusive jurisdiction of real actions, actions under the railway and canal traffic act (17 & 18 Vict. c. 31), the registration of judgments, annuities, etc. (1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 18 Vict. c. 15); respecting fees for conveyances under 3 & 4 Wm. IV. c. 74; the examination of married women concerning their conveyances (11 & 12 Vict. c. 70; 17 & 18 Vict. c. 75; 19 & 20 Vict. c. 108, § 73); and of appeals from the revising barristers' court (6 & 7 Vict. c. 18). Wharton.

COURT OF EXCHEQUER.

In English Law.

A superior court of record, administering justice in questions of law and revenue.

attacks of the canonists and civilians. It derived its name from the fact that the causes of common people were heard there. It had exclusive jurisdiction of real actions as long as those actions were in use, and had also an extensive, and, for a long time, exclusive, jurisdiction of all actions between subjects. This latter jurisdiction, however, was gradually en-

all personal actions. It had formerly an equity jurisdiction, and there was then an equity court; but, by St. 5 Vict. c. 5, this jurisdiction was transferred to the court of chancery.

It consists of one chief and four puisne judges or barons.

As a court of revenue, its proceedings are regulated by 22 & 23 Vict. c. 1, § 9.

As a court of common law, it administers redress between subject and subject in all actions whatever, except real actions.

The appellate jurisdiction from this court is to the judges of the king's bench and common pleas sitting as the court of exchequer chamber, and from this latter court to the house of lords. 3 Steph. Comm. 400-402; 3 Sharswood, Bl. Comm. 44-46.

In Scotch Law.

A court which formerly had jurisdiction of matters of revenue, and a limited jurisdiction over cases between the crown and its vassals, where no questions of title were involved.

This court was established by St. 6 Anne, c. 26, and its processes resembled those in the English court of exchequer. It is now merged in the court of sessions; but the name is still applied to this branch of the latter court, which is held by two of the judges acting in rotation. Paterson, Comp. 1055, note. The proceedings are regulated by St. 19 & 20 Vict. c. 56.

COURT OF EXCHEQUER CHAMBER.

In English law. A court for the correction and prevention of errors of law in the three superior common-law courts of the kingdom.

A court of exchequer chamber was first erected by St. 31 Edw. III, c. 12, to determine causes upon writs of error from the common-law side of the exchequer court. It consisted of the lord chancellor, lord treasurer, and the justices of the king's bench and common pleas. A second court of exchequer chamber was instituted by St. 27 Eliz. c. 8, consisting of

the justices of the common pleas and in error of cases commenced in the king's bench. By the statutes of 11 Geo. IV. and 1 Wm. IV. c. 70, these courts were abolished, and the present court of exchequer chamber substituted in their place.

As a court of debate, it is composed of the judges of the three superior courts of law, to whom is sometimes added the lord chancellor. To this court, questions of unusual difficulty or moment are referred before judgment from either of the three courts.

As a court of appeals, it consists of the judges of two of the three superior courts of law (common bench, king's bench, and exchequer) sitting to decide questions appealed from the others. 3 Sharswood, Bl. Comm. 55. From the decisions of this court a writ of error lies to the house of lords.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.

In English Law.

A court of criminal jurisdiction, in England, held in each county once in every quarter of a year. It is held before two or more justices of the peace, one of whom must be a justice of the quorum.

The stated times of holding sessions are fixed by St. 11 Geo. IV. and 1 Wm. IV. c. 70, § 35. When held at other times than quarterly, the sessions are called "general sessions of the peace."

As to the jurisdiction of the various sessions, see 5 & 6 Vict. c. 38; 7 & 8 Vict. c. 71; 9 & 10 Vict. c. 25; 4 Sharswood, Bl. Comm. 271.

COURT OF HUSTINGS.

In English Law.

The county court in the city of London. It is held nominally before the lord mayor, recorder, and aldermen, but the recorder is practically the sole judge. It has an appellate jurisdiction of causes in the sheriff's court of London. A writ of error lies from the decisions of this court to certain commissioners, usually five of the judges of the superior courts

of law, from whose judgment a writ of error lies to the house of lords. No merely personal actions can be brought in this court. See 3 Bl. Comm. 80, note; 3 Steph. Comm. 449, note; Maddox, Hist. Exch. c. 20; Coke, 2d Inst. 327; Calth. 131.

In American Law.

A local court in some parts of the state of Virginia. 6 Grat. (Va.) 696.

COURT OF INQUIRY.

In English Law.

A court sometimes appointed by the crown to ascertain the propriety of resorting to ulterior proceedings against a party charged before a court-martial. See 2 Steph. Comm. 600, note (z); 1 Coleridge, Bl. Comm. 418, note; 2 Brod. & B. 130.

In American Law.

A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation, or imputation against any officer or soldier. The said court shall consist of one or more officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing; all of whom shall be sworn to the performance of their duty. Rev. St. U. S. §§ 1342, 1624.

COURT OF JUSTICIARY.

In Scotch Law.

A court of general criminal and limited civil jurisdiction.

It consists of the lord justice general, the lord justice clerk, and five other members of the court of sessions. The kingdom is divided into three circuits, in each of which two sessions, of not less than three days each, are to be held annually. Any two of the justices, or the lord justice general alone, or, in Glasgow, a simple justice, may hold a term, except in Edinburgh, where three justices constitute a quorum, and four generally sit in important cases.

Its criminal jurisdiction extends to all crimes committed in any part of the kingdom; and it has the power of reviewing the sentences of all inferior criminal courts, unless excluded by statute. Alison, Prac. 25.

Its civil jurisdiction on circuits is appellate and final in cases involving not more than twelve pounds sterling. See Paterson, Comp. § 940, note, et seq.; Bell, Dict.; Alison, Prac. 25; 20 Geo. II. c. 43; 23 Geo. III. c. 45; 30 Geo. III. c. 17; 1 Wm. IV., c. 69, § 19; 11 & 12 Vict. c. 79, § 8.

COURT OF ORPHANS.

In English Law.

The court of the lord mayor and aldermen of London, which has the care of those orphans whose parents died in London, and was free of the city. By the custom of London, this court is entitled to the possession of the person, lands, and chattels of every infant whose parent was free of the city at the time of his death, and who died in the city. executor or administrator of such deceased parent is obliged to exhibit inventories of the estate of the deceased, and give security to the chamberlain for the orphan's part or share. 2 Steph. Comm. 343.

COURT OF PIEPOUDRE.

(Fr. pied, foot, and poudre, dust, or puldreaux, old Fr. pedlar.) In English law. A court of special jurisdiction incident to every fair or market.

The word piepoudre, spelled also pied-poudre and pypowder, has been considered as signifying dusty feet, pointing to the general condition of the feet of the suitors therein (Cowell; Blount); or as indicating the rapidity with which justice is administered,—as rapidly as dust can fall from the foot (Coke, 4th Inst. 472); or pedlar's feet, as being the court of such chapmen or petty traders as resorted to fairs. It was not confined to fairs or markets, but might exist, by custom, in cities, boroughs, or vills for the collection of debts and the like. Cro.

Jac. 313; Cro. Car. 46; 2 Salk. 604. It was held before the steward of him who was entitled to the tolls from the market. It has fallen into disuse.

The civil jurisdiction extended to all matters of contract arising within the precinct of the fair or market during the continuance of the particular fair or market at which the court was held, the plaintiff being obliged to make oath as to the time and place. The criminal jurisdiction embraced all offenses committed at the particular fair or market at which the court was held. An appeal lay to the courts at Westminster. See Barr. Obs. St. 337; 3 Bl. Comm. 32; Skene de Verb. Sign. "Pede Pulverosus;" Bracton, 334.

COURT OF RECORD.

Viewed in the concrete, a court of record would embrace a judge or judges and a clerk, duly convened at the place prescribed by law for holding courts. Keith v. Kellogg, 97 Ill. 154.

A judicial, organized tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of the common law. A court where the acts and proceedings are enrolled in parchment for a perpetual memorial and testimony. 3 Bl. Comm. 24. A court which has jurisdiction to fine and imprison, or one having jurisdiction of civil causes above forty shillings, and proceeding according to the course of the common law. 37 Me. 29.

All courts are either "of record," or "not of record." The possession of the right to fine and imprison for contempt was formerly considered as furnishing decisive evidence that a court was a court of record (Co. Litt. 117b, 260a; 1 Salk. 144; 12 Mod. 388; 2 Wm. Saund. 101a; Viner. Abr. "Courts"), and it is said that the erection of a new tribunal with this power renders it by that very fact a court of record (1 Salk. 200; 12 Mod. 388; 1 Wooddeson, Lect. 98; 3 Bl. Comm. 24, 25); but every court of record does not possess this power (1 Sid. 145; 3 Sharswood, Bl. Comm. 25, note). The mere

fact that a permanent record is kept does not, in modern law, stamp the character of the court, since many courts, as probate courts, and others of limited or special jurisdiction, are obliged to keep records, and yet are held to be courts not of record. See 11 Mass. 510; 22 Pick. (Mass.) 430; 1 Cow. (N. Y.) 212; 3 Wend. (N. Y.) 268; 10 Pa. St. 158; 5 Ohio, 545; 7 Ala. 351; 25 Ala. 540. The definition first given above is taken from the opinion of Shaw, C. J., in 8 Metc. (Mass.) 171, with an additional element not required in that case for purposes of distinction, and is believed to contain all the distinctive qualities which can be said to belong to all courts technically of record at modern law.

COURTS OF RECORD OF THE COUNTY.

The expression "courts of record of the county," used in section 3 of the Practice Act of 1895, now section 7 of the Practice Act (J. & A. ¶8544), relating to suits against insurance companies, refers to such courts as have a territorial jurisdiction co-extensive with the county limits, and does not include a city court. Supreme Hive v. Harrington, 227 Ill. 523.

COURT OF REVIEW.

A court instituted for the purpose of correcting errors committed by trial courts. First, etc., Bank v. Gerry, 195 Ill. App. 523.

COURT OF SESSION.

In Scotch Law.

The supreme court of civil jurisdiction in Scotland.

The full title of the court is "council and session." It was established in 1425. In 1469 its jurisdiction was transferred to the king's council, which in 1503 was ordered to sit in Edinburgh. In 1532 the jurisdiction of both courts and the joint title were transferred to the present court. The regular number of judges was fifteen; but an additional number of justices might be appointed

by the crown to an unlimited extent. This privilege was renounced by 10 Geo. I. c. 19.

It consists of fifteen judges, and is divided into an inner and an outer house.

The inner house is composed of two branches or chambers, of co-ordinate jurisdiction, each consisting of four judges, and called, respectively, the "first division" and the "second division." The first division is presided over by the lord president or lord justice general, the second by the lord justice clerk. The cuter house is composed of five separate courts, each presided over by a single judge, called a "lord ordinary."

All causes commence before a lord ordinary, in general, and the party may select the one before whom he will bring his action, subject to a removal by the lord president in case of too great an accumulation before any one or more lords ordinary. See Bell, Dict.; Paterson, Comp. § 1055, note, et seq.

COURT OF STAR CHAMBER.

In English law. A court which was formerly held by divers lords, spiritual and temporal, who were members of the privy council, together with two judges of the courts of common law.

It was of very ancient origin, was new modelled by 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20, and was finally abolished, after having become very odious to the people, by 16 Car. I. c. 10. The name "star chamber" is of uncertain origin. It has been thought to be from the Saxon "steoran," to govern, alluding to the jurisdiction of the court over the crime of cosenage, and has been thought to have been given because the hall in which the court was held was full of windows (Lambard, Eiren. 148); or because the roof was originally studded with gilded stars (Coke, 4th Inst. 66); or, according to Blackstone, because the Jewish covenants (called starrs or stars, and which, by a statute of Richard I., were to be enrolled in three places, one of which was near the exchequer) were originally kept there. 4 Bl. Comm. 266, note. The derivation of Blackstone receives confirmation from the fact that this location (near the exchequer) is assigned to the star chamber the first time it is mentioned. The word "star" acquired at some time the recognized signification of inventory or schedule. St. Acad. Cont. 32; 4 Sharswood, Bl. Comm. 266, note.

The legal jurisdiction of this court extended originally to riots, perjuries, misbehavior of sheriffs, and other notorious misdemeanors. It acted without the assistance of a jury, and its proceedings were in secret, by reason of which it fell into popular disrepute. See Hudson, Court of Star Chamber (printed at the beginning of the second volume of the Collectanea Juridica); 4 Sharswood, Bl. Comm. 266, and notes.

COURT OF THE DUCHY OF LANCASTER.

In English law. A court of special jurisdiction, which has jurisdiction of all matters of equity relating to lands holden of the king in right of the duchy of Lancaster.

It is held by the chancellor or his deputy, is a court of equity jurisdiction, and not of record. It is to be distinguished from the court of the county palatine of Lancaster. 3 Bl. Comm. 78.

COURT OF THE LORD HIGH STEWARD.

In English law. A court instituted for the trial of peers indicted for treason, felony, or misprision of either.

This court can be held only during a recess of parliament, since the trial of a peer for either of the above offenses can take place, during a session of that body, only before the high court of parliament. It consists of a lord high steward (appointed, in modern times, pro hac vice merely), and as many of the temporal lords as may desire to take the proper oath and act; and all the peers qualified to sit and vote in parliament are to be summoned at least twenty days before the trial. St. 7 Wm. III. c. 3.

COURT OF THE MARSHALSEA.

In English law. A court which had jurisdiction of causes to which the domestic servants were parties.

It was held by the steward of the king's household, as judge, and the marshal was the ministerial officer, and held pleas of trespasses committed within twelve miles of the sovereign's residence (called the "verge of the court"), where one of the parties was a servant of the king's household, and of all debts, contracts, and covenants where both parties were servants as above. Where one of the parties only was of the king's household, a jury of the country was summoned; in the other case, the inquest was composed of men of the household only. This court was merged, in the time of Charles I., in the palace court, and abolished by 12 & 13 Vict. c. 101, \$13.

COURT OF WARDS AND LIVERIES.

In English law. A court of record in England, which had the supervision and regulation of inquiries concerning the profits which arose to the crown from the fruits of tenure, and to grant to heirs the delivery of their lands from the possession of their guardians.

The court of the king's wards was instituted by St. 32 Hen. VIII. c. 46, to take the place of the ancient inquisitio post mortem, and the jurisdiction of the restoration of lands to heirs on their becoming of age (livery) was added by St. 33 Hen. VIII. c. 22, when it became the court of wards and liveries. It was abolished by St. 12. Car. II. c. 24.

The jurisdiction extended to the superintendency of lunatics and idiots in the king's custody, granting licenses to the king's widows to marry, and imposing fines for marrying without license. 4 Reeve, Hist. Eng. Law, 259; Crabb, Hist. Eng. Law, 468; 1 Steph. Comm. 183, 192; 4 Steph. Comm. 40; 2 Sharswood, Bl. Comm. 68, 77; 3 Sharswood, Bl. Comm. 258.

COURTS OF ASSIZE AND NISI PRIUS.

In English law. Courts composed of or more commissioners. called "judges of assize" (or of assize and nisi prius), who are twice in every year sent by the queen's (or king's) commission on circuits all around the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of Westminster Hall; there being, however, as to London and Middlesex, this exception: That, instead of their being comprised within any circuit, courts of nisi prius are held for the same purpose, in and after every term, before the chief or other judge of the superior court, at what are called the London and Westminster sittings.

These judges of assize came into use in the room of the ancient justices in eyre (justiciarii in itinere), who were regularly established, if not first appointed, by the parliament of Northampton, A. D. 1176 (22 Hen. II.), with a delegated power from the king's great court, or aula regis, being looked upon as members thereof; though the present justices of assize and nisi prius are more immediately derived from St. Westminster II. (13 Edw. I. c. 30), and consist principally of the judges of the superior courts of common law, being assigned by that statute out of the king's sworn justices, associating to themselves one or two discreet knights of each county. By St. 27 Edw. I. c. 4 (explained by 12 Edw. II. c. 3), assizes and inquests are allowed to be taken before any one justice of the court in which the plea is brought, associating with him one knight or other approved man of the county. By St. 14 Edw. III. c. 16, inquests of nisi prius may be taken before any justice of either bench (though the plea be not depending in his own court), or before the chief baron of the exchequer, if he be a man of the law, or otherwise, before the justices of assize, so that one of such justices be a judge of the king's bench or common pleas, or a king's sergeant sworn. And finally, by 2 & 3 Vict. c. 22, all justices of assize may, on their respective circuits, try causes pending in the court of exchequer, without issuing (as it had till then been considered necessary to do) a separate commission from the exchequer for that purpose. 3 Steph. Comm. 421-423; 3 Bl. Comm. 57, 58.

COURTS OF PRINCIPALITY OF WALES.

A species of private courts, of a limited though extensive jurisdiction, which, upon the thorough reduction of that principality, and the settling of its polity in the reign of Henry VIII., were erected all over the country. These courts, however, have been abolished by 1 Wm. IV. c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do the circuits in England, for the purpose of disposing of those causes which are ready for trial. Brown.

COURTS OF SURVEY.

Courts for the hearing of appeals by owners or masters of ships, from orders for the the detention of unsafe ships, made by the English board of trade under the merchant shipping act of 1876 (section 6), consisting of a judge summoned by the registrar from a list of wreck commissioners (q. v.), stipendiary magistrates, etc., which is provided for the purpose, and of two assessors; one appointed by the board of trade, and the other summonsed by the registrar out of a list of persons provided for the purpose (Id. § 7). Rules of Court of Survey 1876.

COURTS OF THE CINQUE PORTS.

In English law. Courts of limited local jurisdiction, formerly held before the mayor and jurats (aldermen) of the Cinque Ports.

A writ of error lay to the lord warden in his court of Shepway, and from this court to the queen's bench. By 18 and 19 Vict. c. 48, and 20 & 21 Vict. c. 1, the jurisdiction and authority of the lord warden of the Cinque Ports and constable of | sister of one's father or mother.

Dover Castle, in or in relation to the administration of justice in actions, suits, or other civil proceedings, at law or in equity, are abolished. 3 Sharswood. Bl. Comm. 79; 3 Steph. Comm. 447, 448.

COURTS OF WESTMINSTER HALL.

The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital justiciary of England, in the aula regis, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors, to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III., that "common pleas should no longer follow the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity also sit at Westminster, nominally, during term time, although, actually, only during the first day of term, for they generally sit in courts provided for the purpose in, or in the neighborhood of, Lincoln's Inn. Brown.

COURT OR JUDGE.

The expression "court or judge," appearing in several sections of the Eminent Domain Act, for example, in section 5 (J. & A. ¶ 5255), does not refer to or provide for two separate tribunals which have jurisdiction of proceedings under the act, and a proceeding commenced before one judge is pending in court before another who may sit in that court. Bowman v. Venice & C. Ry. Co., 102 III. 467.

COUSIN.

The son or daughter of the brother or

issue, respectively, of two brothers or two sisters, or of a brother and a sister. Those who descend from the brother or sister of the father of the person spoken of are called "paternal cousins." "Maternal cousins" are those who are descended from the brothers or sisters of the mother. See 2 Brown, Ch. 125; 1 Sim. & S. 301; 3 Russ. 140; 9 Sim. 386, 457.

COVENANT.

Defined.

An agreement duly made between the parties to do or not to do a particular act. Bald v. Nuernberger, 267 Ill. 622; Nowak v. Dombrowski, 267 Ill. 108.

A promise or agreement in writing, under seal. Nowak v. Dombrowski, 267 Ill. 108.

Condition Compared.

It is frequently difficult to determine whether a certain provision annexed to a grant is a condition, covenant, restriction, limitation or trust imposed on the property, but if it is doubtful whether the clause is a condition or a covenant it will be construed to be a covenant. Bald v. Nuernberger, 267 Ill. 622; Koch v. Streuter, 232 Ill. 597.

Various Forms.

The difference between covenants of seizin, right to convey, and against encumbrances, and those of warranty, quiet enjoyment, and further assurance, is that the former are in the present tense, relating to something being or existing at the time the covenant is made, while the latter relate to something future, and are to guard against the consequence of some future act, or for the performance of some future act which the condition of the title to the estate may require. Newman v. Sevier, 134 Ill. App. 548.

Covenants are classified on several lines of division, the principal ones being:

Affirmative or negative.

(1) Affirmative covenants are those in which the covenantor declares that something has been already done, or shall be done in the future. Such covenants do not operate to deprive covenantees of

rights enjoyed independently of the covenants. Dyer, 19b; 1 Leon. 251.

(2) Negative covenants are those in which the party obligates himself to do or perform some act. Courts are unwilling to construe a negative covenant a condition precedent, inasmuch as it cannot be said to be performed till a breach becomes impossible. 2 Wm. Saund. 156; 1 Mod. 64; 2 Keb. 674; 1 Sid. 87.

Inherent or collateral.

- (3) Inherent covenants are those which relate directly to the land itself, or matter granted. Shep. Touch. 161. Distinguished from collateral covenants.
- If real, they run with the land. Platt, Cov. 66.
- (4) Collateral covenants are those which are entered into in connection with the grant of something, but which do not relate immediately to the thing granted; as, to pay a sum of money in gross, that the lessor shall distrain for rent on some other land than that which is demised, to build a house on the land of some third person, or the like. Platt, Cov. 69; Shep. Touch. 161; 4 Burrows, 2439; 3 Term R. 393; 2 J. B. Moore, 164; 5 Barn. & Ald. 7; 2 Wils. 27; 1 Ves. Jr. 56.

Dependent, concurrent, or independent.

- Dependent covenants are those in which the obligation to perform one is made to depend upon the performance of the other. Covenants may be so connected that the right to insist upon the performance of one of them depends upon a prior performance on the part of the party seeking enforcement. Platt, Cov. 71; 2 Selw. N. P. 443; Steph. N. P. 1071; 1 C. B. (N. S.) 646; 6 Cow. (N. Y.) 296; 2 Johns. (N. Y.) 209; 2 Watts & S. (Pa.) 227; 8 Serg. & R. (Pa.) 268; 4 Conn. 3; 24 Conn. 624; 11 Vt. 549; 17 Me. 232; 3 Ark. 581; 1 Blackf. (Ind.) 175; 6 Ala. 60; 3 Ala. (N. S.) 330.
- (6) Concurrent covenants are those which are to be performed at the same time. When one party is ready and offers to perform his part, and the other refuses or neglects to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is

not certain that either is obliged to do the first act. Platt, Cov. 71; 2 Selw. N. P. 443; Doug. 698; 18 Eng. Law & Eq. 81; 4 Wash. C. C. (U. S.) 714; 16 Mo. 450.

(7) Independent covenants are those the necessity of whose performance is determined entirely by the requirements of the covenant itself, without regard to other covenants between the parties relative to the same subject-matter or transactions or series of transactions.

Covenants are generally construed to be independent (Platt, Cov. 71; 2 Johns. [N. Y.] 145; 10 Johns. [N. Y.] 204; 21 Pick. [Mass.] 438; 1 Ld. Raym. 666; 3 Bing. [N. S.] 355); unless the undertaking on one side is in terms a condition to the stipulation of the other, and then only consistently with the intention of the parties (3 Maule & S. 308; 10 East, 295, 530); or unless dependency results from the nature of the acts to be done, and the order in which they must necessarily precede and follow each other in the progress of performance (Willes, 496); or unless the nonperformance on one side goes to the entire substance of the contract, and to the whole consideration (1 Seld. [N. Y.] 247). If once independent, they remain so. 19 Barb. (N. Y.) 416.

Executed or executory.

- (8) Executed covenants are those which relate to acts already performed. Shep. Touch, 161.
- (9) Executory covenants are those whose performance is to be future. Shep. Touch. 161.

Express or implied.

(10) Express covenants are those which are created by the express words of the parties to the deed declaratory of their intention. Platt, Cov. 25. formal word "covenant" is not indispensably requisite for the creation of an express covenant. 2 Mod. 268; 3 Keb. 848; 1 Leon. 324; 1 Bing. 433; 8 J. B. Moore, 546; 12 East, 182, note; 16 East, 352; 1 Bibb. (Ky.) 379; 2 Bibb. (Ky.) 614; 3 Johns. (N. Y.) 44; 5 Cow. (N. Y.) 170; 4 Conn. 508; 1 Har. (Del.) 233. The words "I oblige," "I agree" (1 Ves. Jr. 516; 2 Mod. 266), "I bind myself" (Hardr. 178; 3 Leon. 119), have been

held to be words of covenant, as are the words of a bond (1 Chanc. Cas. 194). Any words showing the intent of the parties to do or not to do a certain thing raise an express covenant (13 N. H. 513); but words importing merely an order or direction that other persons should pay a sum of money are not a covenant (6 J. B. Moore, 202, note [a]).

(11) Implied covenants are those which arise by intendment and construction of law from the use of certain words in some kinds of contracts. Bac. Abr. "Covenant" (B); Rawle, Cov. 364; 1 C. B. 402. Thus, in a conveyance of lands in fee, the words "grant, bargain, and sell" imply certain covenants (see 4 Kent, Comm. 473), and the word "give" implies a covenant of warranty during the life of the feoffor (10 Cush. [Mass.] 134; 4 Gray [Mass.] 468; 2 Caines [N. Y.] 193; 9 N. H. 222; 7 Ohio, pt. 2, p. 63); and in a lease the use of the words "grant and demise" (Co. Litt. 384; 4 Wend. [N. Y.] 502; 8 Cow. [N. Y.] 36), "grant" (Freem. Ch. 367; Cro. Eliz. 214; 4 Taunt. 609; 1 Per. & D. 360), "demise" (4 Coke, 80; 10 Mod. 162; Hob. 12; 9 N. H. 222; 15 N. Y. 327), "demisement" (1 Show. 79; 1 Salk. 137), raises an implied covenant on the part of the lessor, as do "yielding and paying" (9 Vt. 151) on the part of the lessee. regard to the covenants arising to each grantee by implication on sale of an estate with conditions, in parcels to several grantees, see 23 Barb. (N. Y.) 153.

Obligatory or declaratory.

- (12) Obligatory covenants are those which are binding on the party himself.1 Sid. 27; 1 Keb. 337.
- (13) Declaratory covenants are those which serve to limit or direct uses. 1 Sid. 27; 1 Hob. 224.

Principal or auxiliary.

- (14) Principal covenants are those which relate directly to the principal matter of the contract entered into between the parties. They are distinguished from auxiliary.
- (15) Auxiliary covenants are those which do not relate directly to the principal matter of contract between the parties, but to something connected with

it. Those the scope of whose operation is in aid or support of the principal covenant. If the principal covenant is void, the auxiliary is discharged. Anstr. 256; Prec. Chanc. 475.

Transitive or intransitive.

- (16) Transitive covenants are those personal covenants the duty of performing which passes over to the representatives of the covenantor.
- (17) Intransitive covenants are those the duty of performing which is limited to the covenantee himself, and does not pass over to his representative.
- (18) Disjunctive or alternative covenants are those which are for the performance of one or more of several things, at the election of the covenantor or covenantee, as the case may be. Platt, Cov. 21; 1 Duer (N. Y.) 209.
- (19) Covenants in deeds are express covenants.
- (20) Covenants in gross are such as do not run with the land.
- (21) Covenants in law are implied covenants.
- (22) Illegal covenants are those which are expressly or impliedly forbidden by law. Covenants are absolutely void when entered into in violation of the express provisions of statutes (5 Har. & J [Md.] 193; 5 N. H. 96; 6 N. H. 225; 1 Bin. [Pa.] 118; 6 Bin. [Pa.] 321; 4 Serg. & R. [Pa.] 159; 4 Halst. [N. J.] 252) or if they are of immoral nature (3 Burrows, 1568; 1 Esp. 13; 1 Bos. & P. 340; 3 T. B. Mon. [Ky.] 35), against public policy (4 Mass. 370; 5 Mass. 385; 7 Me. 113; 5 Halst. [N. J.] 87; 3 Day [Conn.] 145; 7 Watts [Pa.] 152; 5 Watts & S. [Pa.] 315; 6 Miss. 769; 2 McLean [U. S.] 464; 4 Wash. C. C. [U. S.] 297; 11 Wheat. [U. S.] 258), in general restraint of trade (21 Wend. [N. Y.] 166; 7 Cow. [N. Y.] 307; 6 Pick. [Mass.] 206; 19 Pick. [Mass.] 51), or fraudulent between the parties (4 Serg. & R. [Pa.] 483; 7 Watts & S. [Pa.] 111; 5 Mass. 16), or third persons (3 Day [Conn.] 450; 14 Serg. & R. [Pa.] 214; 3 Caines [N. Y.] 213; 2 Johns. [N. Y.] 286; 12 Johns. [N. Y.] 306; 15 Pick. [Mass.] 49).

COVENANT COLLATERAL.

A covenant which is conversant about some collateral thing that doth nothing at all, or not so immediately concern the thing granted; as to pay a sum of money in gross, etc. Shep. Touch. 161.

COVENANT FOR FURTHER ASSURANCE.

One by which the covenantor undertakes to do such reasonable acts in addition to those already performed as may be necessary for the completion of the transfer made, or intended to be made, at the requirement of the covenantee. It relates both to the title of the vendor and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts for supplying any defect in the former, as to remove all objections to the sufficiency and security of the latter. Platt. Cov. 341.

COVENANT FOR QUIET ENJOYMENT.

Defined.

A covenant that the lessor shall have such title to the premises as will enable him to give a good unincumbered lease for the term demised. Gazzolo v. Chambers, 73 Ill. 79.

An assurance against the consequences of a defective title, and of any disturbances thereupon. Platt, Cov. 312. By it, when general in its terms, the covenantor stipulates at all events (11 East, 642; 1 Mod. 101) to indemnify the covenantee against all acts committed by virtue of a paramount title (Platt, Cov. 313; 1 Lev. 83; 8 Lev. 305; Hob. 34; 4 Coke, 80b; Cro. Car. 5; 3 Term R. 584; 6 Term R. 66; 3 Duer [N. Y.] 464; 2 Jones [N. C.] 203; Busb. [N. C.] 384; 3 N. J. 260), not including the acts of a mob (19 Miss. 87; 2 Strobh. [S. C.] 366), nor a mere trespass by the lessor (10 N. Y. 151). It most generally occurs in leases.

Character.

A covenant for quiet enjoyment is of a prospective character, in the nature of

a real covenant, running with the land, descending to the heirs, and vesting in assignees and purchasers. Beebe v. Swartwout, 8 Ill. 179.

Scope.

The covenant for quiet enjoyment extends to lawful disturbances only, made under assertion of title, and does not include tortious acts. Beebe v. Swartwout. 8 Ill. 180.

Tortious Acts.

The covenant for quiet enjoyment, in a lease, implies no warranty against the acts of strangers. Gazzolo v. Chambers, 73 Ill. 79.

COVENANT FOR SEIZIN.

A covenant for seizin is a covenant in presenti. Baker v. Hunt, 40 Ill. 266; Brady v. Spurck, 27 Ill. 481.

An assurance to the grantee that the grantor has the very estate, both in quantity and quality, which he professes to convey. Newman v. Sevier, 134 Ill. App. 548.

A covenant for seizin only extends to a title existing in a third party, which may defeat the estate granted by the covenantors, and does not embrace a title that is vested at the time in the covenantee. Smiley v. Fries, 104 Ill. 420; Furness v. Williams, 11 Ill. 241; Beebe v. Swartwout, 8 Ill. 178; Davenport v. Roberts, 171 Ill. App. 197.

COVENANT INHERENT.

A covenant which is conversant about the land, and knit to the estate in the land; as that the thing demised shall be quietly enjoyed, shall be kept in reparation, shall not be aliened, etc. Shep. Touch, 161.

COVENANT NOT TO SUE.

A covenant never to sue is regarded as an absolute release, but a covenant not to sue within a limited time cannot be pleaded in bar of an action brought before the time has expired. Chalon Guard v. Whiteside, 13 Ill. 8.

A perpetual covenant not to sue is one by which the covenantor agrees not to sue the covenantee at any time. Such a covenant operates as a release to the covenantee, and may be pleaded as such. Cro. Eliz. 623; 1 Term R. 446; 8 Term R. 486; 2 Salk. 375; 3 Salk. 298; 12 Mod. 415; 7 Mass. 153; 16 Mass. 24; 17 Mass. 623; 3 Ind. 473. And see 11 Serg. & R. (Pa.) 149.

A limited covenant not to sue, by which the covenantor agrees not to sue for a limited time, does not operate a release; and a breach must be taken advantage of by action. Carth. 63; 1 Show. 46; 2 Salk. 573; 6 Wend. (N. Y.) 471; 5 Cal. 501. See 29 Ala. (N. S.) 322, as to requisite consideration.

COVENANT OF WARRANTY.

The covenant of warranty originated at common law from the feudal system from the fact that as that system imposed on the grantee the duties of tenure, it also bound the lord to a reciprocal obligation, either to protect his tenant in his flef, or to give him another, and this liability descended to the heir as long as he had lands of his ancestor to answer it. Dorsey v. St. Louis, A. & T. H. R. Co., 58 Ill. 68.

Nature.

A covenant of warranty is in effect the same as a covenant for quiet enjoyment, its true meaning being that the grantee, his heirs and assigns, shall not be deprived of possession by a paramount title. Athens v. Nale, 25 III. 180; Newman v. Sevier, 134 III. App. 548.

COVENANT REAL.

A covenant in a deed binding the heirs of the covenantor, and passing to assignees, or to the purchaser. 3 Bl. Comm. 304; 4 Kent, Comm. 471, 472. A covenant which so runs with the land that he that hath the one hath or is subject to the other. Shep. Touch. 161. It is thus distinguished from a personal covenant, which affects only the covenantor, and the assets in the hands of his representatives after his death. 4 Kent, Comm. 470.

The covenants in a deed that the grantor is lawfully seised, and has good right to convey, and that the land is free from incumbrance, are personal covenants, not running with the land; the covenant for quiet enjoyment, and the covenant of warranty, are in the nature of real covenants. 4 Kent, Comm. 471. But see 4 Kent, Comm. 472, and notes; 1 Sumn. (U. S.) 263.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. Termes de la Ley; 3 Bl. Comm. 156.

COVENANT RUNNING WITH THE LAND.

What Constitutes.

Covenants extending to a thing in esse, parcel of the demise, and benefiting the estate, run with the land. Louisville & N. R. Co. v. Illinois C. R. Co., 174 Ill. 452; Webster v. Nichols, 104 Ill. 176.

All covenants which relate to land and are for its benefit run with it. Louisville & N. R. Co. v. Illinois C. R. Co., 174 Ill. 453; Brockmeyer v. Sanitary District, 118 Ill. App. 56.

Covenants in an agreement between railroads whereby one was invested with an estate for years across the right of way of the other, under which the tenant for years was entitled to hold possession and covenanted to pay rent in consideration of such fact, are covenants running with the land. Louisville & N. R. Co. v. Illinois C. R. Co., 174 Ill. 453.

A covenant is said to run with the land when either the liability to perform it or the right to take advantage of it passes to the vendee or other assignee of the land. Gerling v. Lain, 269 Ill. 340; Dorsey v. St. Louis, A. & T. H. R. Co., 58 Ill. 67; Wiggins Ferry Co. v. Ohio & M. Ry. Co, 94 Ill. 91; Barry v. Chicago, I. & St. L. S. L. R. Co., 156 Ill. App. 13; Scheidt v. Belz, 4 Ill. App. 436.

A covenant which goes with the land (conveyed by the deed in which it is expressed), as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 Kent, Comm. 472, note. A covenant is said to run with the land when not only the original parties to the deed of conveyance, or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable, as the case may be, to its obligation. 1 Steph. Comm. 455, and note (r); Burton, Real Prop. 157. Or, in other words, it is so called when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land. 1 Smith, Lead. Cas. 27. note; 5 Coke, 16a; 4 Kent, Comm. 470-473.

A covenant to pay rent, to produce title deeds, or for renewal, are covenants which run with the land. All covenants concerning title run with the land, with the exception of those that are broken, if at all, before the land passes. 4 Kent, Comm. 473.

Test.

Whether a covenant will run with the land depends not so much on whether it is to be performed on the land itself, as whether it tends directly or necessarily to enhance its value, or render it more beneficial and convenient to those by whom it is owned or occupied. Louisville & N. R. Co. v. Illinois C. R. Co., 174 Iil. 453; Gibson v. Holden, 115 Iil. 209; Wiggins Ferry Co. v. Ohio & M. R. Co., 94 Ill. 95; Barry v. Chicago, I. & St. L. S. L. R. Co., 156 Ill. App. 13.

Essentials.

In order that a covenant may run with the land, its performance or non-performance must affect the nature, quality or value of the property demised, independent of collateral circumstances, or must affect the mode of enjoyment, and not only concern the land, but there must be a privity of estate between the contracting parties. Wiggins Ferry Co. v. Ohio & M. Ry. Co., 94 Ill. 91; Barry v. Chicago, I. & St. L. S. L. R. Co., 156 Ill. App. 13.

Annexed to Incorporeal Hereditament.

A covenant may run with an incorporeal as well as with a corporeal hereditament. Louisville & N. R. Co. v. Illinois C. R. Co., 174 Ill. 453; Fitch v. Johnson, 104 Ill. 121; Sterling, etc., Co. v. Williams, 66 Ill. 397.

Covenant Making Rent First Lien.

A covenant in a lease that the rent shall be a first lien on the buildings erected by the lessee on the property and on the lessee's interest in the lease is a covenant running with the land, being in the nature of security for the performance of the covenant to pay rent, and a remedy therefor, being an incident or accessory to that covenant, and not a debt or right of property. Webster v. Nichols, 104 Ill. 176.

Covenant of Seizin.

A covenant of seizin is not a covenant running with the land. Newman v. Sevier, 134 Ill. App. 549.

COVER.

To be equal to; be of the same extent or amount; be co-extensive with; be equivalent; as, the receipts do not cover the expenses; to counterbalance; compensate for; as, to cover one's loss. Off v. J. B. Inderrieden Co., 74 Ill. App. 109.

COVERTURE.

At Common Law.

At common law the "coverture" of a married woman was a state of incapacity to part with any right by her sole act. Osborn v. Horine, 19 Ill, 125.

Implies Protection of Husband.

The term "coverture" implies that during its continuance a woman is under the protection of her husband. Osborn v. Horine, 19 Ill. 124.

COVIN.

A secret contrivance between two or more persons to defraud and prejudice another of his rights. Co. Litt. 357b; Comyn, Dig. "Covin" (A); 1 Viner, Abr. 473.

COVIN OR COLLUSION.

The expression "covin or collusion," used in section 132 of division 1 of the Criminal Code (J. & A. ¶ 3735), relating to the recovery of money or other valuable thing lost at gaming, refers to covin or collusion between the person who loses and the person who wins, and not between the loser and the third person suing for the penalty. Kizer v. Walden, 198 Ill. 280.

COWARDICE.

Pusilianimity; fear; misbehavior through fear in relation to some duty to be performed before an enemy. O'Brien, Court-Martial, 142. By both the army and navy regulations of the United States, this is an offense punishable in officers or privates with death, or such other punishment as may be inflicted by a court-martial. 1 Story, U. S. Laws, 761; Act Cong. April 10, 1806, art. 52.

CRANAGE.

A toll paid for drawing merchandise out of vessels to the wharf. So called because the instrument used for the purpose is called a "crane." 8 Coke, 46.

CRASTINUM, OR CRASTINO.

(Lat. tomorrow.) On the day after. The return day of writs is made the second day of the term; the first day being some saint's day, which gives its name to the term. In the law Latin, crastino (the morning, the day after) would then denote the return day. 2 Reeve, Hist. Eng. Law, 56, 57.

CRAVEN, CRAVENT, OR CRA-VANT.

(From Saxon crafan, to crave, beg, or implore.) In old English law. A word of obloquy and disgrace, in the ancient trial by battle, on the uttering of which by

either champion, he was considered as yielding the victory to his opponent, and was condemned, as a recreant, amittere liberam legem, to lose his frank law, that is, to become infamous, and not to be accounted a free and lawful man, liber et legalis homo, being supposed by the court to be proved forsworn, and therefore never to be put on a jury or admitted as a witness in any cause. 3 Bl. Comm. 340; 4 Bl. Comm. 348; 4 Steph. Comm. 415. Called verbum recreantisae, the word of recreancy. Fleta, lib. 1, c. 38, § 18. The word is still popularly used in the same dishonorable sense.

CREAMERY.

A place where butter is made. Elgin, etc., Co. v. Elgin, etc., Co., 155 Ill. 134.

It is not the size or capacity of a factory where butter is made which makes it a creamery. Elgin, etc., Co. v. Elgin, etc., Co., 155 Ill. 134.

CREATED.

Caused to exist; produced; generated. Caruthers v. McNeill, 97 Ill. 266.

A bonded debt cannot be considered as "created" until bonds are issued by the corporation; and hence a statute prohibiting corporations from creating any debts beyond their capital stock does not authorize the refusal of an officer to file certificate of the adoption of a resolution to create a bonded debt, on the ground that the proposed debt exceeds the subscribed stock. 2 Fletcher Cyclopedia Corporations, 1932.

CREATED BY ESTOPPEL.

A title is created by estoppel when a person not having an estate at the time of his grant with warranty afterwards acquires the same. Grand Tower, etc., Co. v. Gill, 111 Ill. 556.

CREDENTIALS

Papers which give a title or claim to confidence.

In International Law.

The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, mandatum manifestum. Vattel, liv. 4, c. 6, § 76.

CREDERE.

A Latin word, definable as "to trust." Lucas v. People, 75 Ill. App. 665.

CREDIBLE EVIDENCE.

Within the meaning of the rule that where a witness has wilfully or corruptly sworn falsely the jury may disregard his testimony unless corroborated by "credible evidence," the quoted expression means evidence worthy of belief—that is, worthy to be considered by the jury, and not evidence which is necessarily true. Chicago & A. R. Co. v. Kelly, 210 Ill. 452.

CREDIBLE WITNESSES.

One who, being competent to give evidence, is worthy of belief. 5 Mass. 219; 17 Pick. (Mass.) 154; 2 Curt. Ecc. 336.

Wills Act-Persons Excluded.

The expression "credible witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), relating to the execution of wills, excludes all persons who for any reason are disqualified from giving testimony generally, or by reason of interest or other disqualifying cause is incompetent to testify in respect to the particular subject under investigation. Jones v. Grieser, 238 Ill. 186; Boyd v. McConnell, 209 Ill. 398. To the same effect see In re Noble, 124 Ill. 270.

- Refers to Competent Witnesses.

The expression "credible witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), refers to witnesses legally competent to testify in a court of justice

to the facts which he attests by subscribing his name to the will. Smith v. Goodell, 258 Ill. 148; Jones v. Grieser, 238 Ill. 186; O'Brien v. Bonfield, 213 Ill. 433.

The expression "credible witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), relating to the execution of wills, means competent witnesses. Scott v. O'Connor-Couch, 271 Ill. 397; Judy v. Judy, 261 Ill. 474; In re Will of Delavergne, 259 Ill. 590; Smith v. Goodell, 258 Ill. 148; Fearn v. Postlethwaite, 240 Ill. 629; Jones v. Grieser, 238 Ill. 186; Gump v. Gowans, 226 Ill. 637; O'Brien v. Bonfield, 213 Ill. 433; Johnson v. Johnson, 187 Ill. 93; Sloan v. Sloan, 184 Ill. 584; Chicago, etc., Co. v. Brown, 183 Ill. 48; Harp v. Parr, 168 Ill. 473; Fisher v. Spence, 150 Ill. 257; In re Noble, 124 Ill. 270; Standley v. Moss, 114 Ill. App. 615; In re Noble, 22 Ill. App. 537.

- Refers to Time of Executing Will.

The expression "credible witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), relating to the execution of wills, refers to the competency of such witnesses at the time of the execution of the will, and not at the time the will is offered for probate, so that if such witnesses are competent when the will is executed, they are not rendered otherwise incompetent, within the meaning of the expression, by a subsequent disqualification. Scott v. O'Connor-Couch, 271 Ill. 397; Judy v. Judy, 261 Ill. 474; In re Delavergne, 259 Ill. 591; Smith v. Goodell, 258 Ill. 148; Fearn v. Postlethwaite, 240 Ill. 629; Jones v. Grieser, 238 Ill. 186; Gump v. Gowans, 226 Ill. 637; Johnson v. Johnson, 187 Ill. 94; Slingloff v. Bruner, 174 Ill. 568; Fisher v. Spence, 150 Ill. 257; In re Noble, 124 Ill. 270; Standley v. Moss, 114 Ill. App. 615.

— Executor.

The expression "competent witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), relating to the execution of wills, does not include an executor. Jones v. Grieser, 238 Ill. 187; Ferguson v. Hunter, 7 Ill. 662.

— Husband of Testatrix.

The expression "credible witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), relating to the execution of wills, excludes the husband of the testatrix. Gump v. Gowans, 226 Ill. 637.

- Husband or Wife of Devisee.

The expression "credible witnesses," used in section 2 of the Wills Act (J. & A. ¶ 11543), relating to the execution of wills, excludes the husband or wife of a devisee or legatee under the will sought to be proved although after the death of the testator such devisee or legatee relinquishes all interest under the will. Sloan v. Sloan, 184 Ill. 582; Chicago, etc., Co. v. Brown, 183 Ill. 44; Fisher v. Spence, 150 Ill. 258.

CREDIBILITY.

Worthiness of belief, and therefore the effect of the competent evidence of each witness. Johnson v. People, 140 Ill. 352.

CREDIT.

Derivation.

The word "credit" is derived from the Latin word "credere." Lucas v. People, 75 Ill. App. 665. See also Credere.

Commercial Sense.

The confidence reposed in the ability and intention of a purchaser or borrower to make payment at some future time, either specified or indefinite. Lucas v. People, 75 Ill. App. 665.

What Constitutes.

The word "credit" includes both cases where a merchant sells wares on an express or implied promise to pay in the future, and cases where a banker or broker lends money on a similar promise, whether given as a result of representations as to solvency or honesty, or with security. Lucas v. People, 75 Ill. App. 665.

Criminal Code.

The word "credit," used in section 97 of division 1 of the Criminal Code (J. &

A. ¶ 3654), relating to obtaining credit by false representations in writing, includes cases where a loan is procured by false representations in writing made by the borrower as to his solvency, but does not include cases where the representation was oral. People v. Lucas, 75 Ill. App. 666.

CREDIT GUARANTY.

A form of guaranty insurance. People v. Rose, 174 Ill. 312.

CREDITABLE.

An instruction that the jury may disregard the testimony of a witness who testifies falsely upon a material point in issue unless corroborated by "creditable" evidence is not erroneous because the quoted word is not commonly used in the sense of "credible," the instruction being not misleading in that respect. People v. Turner, 265 Ill. 599.

CREDITOR.

Defined.

A person to whom a debt is owing by another person. Woolverton v. G. H. Taylor Co., 43 Ill. App. 426.

He who has a right to require the fulfillment of an obligation or contract. Dunnigan v. Stevens, 122 Ill. 404; Estate of Wilson, 80 Ill. App. 219.

One to whom a sum of money is due for any cause. Estate of Wilson, 80 Ill. 219.

As Meaning Creditor at Large.

The simple word "creditor," standing by itself, means "creditor at large," and is so used and generally understood. Woolverton v. G. H. Taylor Co., 43 Ill. App. 426.

Corporations Act.

Section 16 of the Corporations Act (J. & A. ¶ 2433), relating to the personal liability of officers of a corporation to the "creditors" of such corporation for excessive issue of stock, means, by the word "creditors," all the creditors, and puts all the creditors of such corporation upon an

equality, and does not permit one creditor to collect the whole amount for which the officers were liable, so that such amount is a trust fund, to be collected and distributed among the creditors ratably, and only in a court of equity. Low v. Buchanan, 94 Ill. 80. To the same effect see Harper v. Union, etc., Co., 100 Ill. 231; Woolverton v. G. H. Taylor Co., 43 Ill. App. 426.

Administration Act.

The term "creditor," used in section 48 of the Administration Act (J. & A. \P 97), relating to the revocation of letters of administration to public administrators, means one to whom a sum is due from and to be paid out of an estate after allowing all just credits. Estate of Wilson, 80 Ill. App. 219.

The term "creditor," used in section 48 of the Administration Act (J. & A. ¶ 97), relating to the revocation of letters of administration granted to public administrators, does not include one who, although holding a valid claim against the estate of a decedent, is indebted to such estate in a greater sum than the amount of his claim. Estate of Wilson, 80 Ill. App. 219.

Frauds and Perjuries Act.

The term "creditors," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶5870), relating to fraudulent conveyances, includes a creditor who has reduced his claim to judgment, if the claim sued on was in existence at the time the transfer was made, although the judgment was not obtained till afterward. Weller v. Schulte, 137 Ill. App. 522.

- Includes All Having Demands.

The term "creditors," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶ 5870), relating to fraudulent conveyances, is not used in a strictly technical sense, and includes all persons having demands, accounts, interests or causes of action for which they might recover any debt, damages, penalty or forfeiture, whether the demands be absolute or contingent. Blankenship v. Hall, 233 Ill. 131; Bongard v. Block, 81 Ill. 187;

Waldradt v. Brown, 6 Ill. 399. To the same effect see Weller v. Schulte, 137 Ill. App. 522; Dunphy v. Gorman, 29 Ill. App. 135.

- Includes Wife Deprived of Support.

The expression "creditors or other persons," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶ 5870), relating to fraudulent conveyances, includes a wife who is living apart from a husband who has by such a conveyance prevented her from obtaining maintenance from his estate, whether or not such a wife is technically within the meaning of the term "creditors." Tyler v. Tyler, 126 Ill. 536.

- Includes Plaintiff Ex Delicto.

The term "creditors," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶5870), relating to fraudulent conveyances, includes a plaintiff in an action ex delicto, such as an action for slander. Waldradt v. Brown, 6 Ill. 399.

- Includes Surety on Note.

The term "creditors," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶5870), relating to fraudulent conveyances, includes a surety on a promissory note whose liability as such surety did not accrue till after the conveyance was made. Hatfield v. Merod, 82 Ill. 113. To the same effect see Choteau v. Jones, 11 Ill. 318; Dunphy v. Gorman, 29 Ill. App. 136 (where plaintiff was surety on a bond).

- Judgment Creditor Included.

The term "creditors," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶5870), relating to fraudulent conveyances, includes a judgment creditor holding a judgment on which an execution has issued. Bongard v. Block, 81 Ill. 187.

CREDITORS AND OTHERS.

Widow Receiving Award.

The term "creditors," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶5870), relating to fraudulent con-

veyances, includes a wife contingently entitled to an award under section 74 of the Administration Act (J. & A. ¶ 123), so as to enable a widow, after an award has been made, to maintain a bill to set aside a fraudulent conveyance made in the lifetime of her husband. Blankenship v. Hall, 233 Ill. 131.

Conveyances Act.

The word "creditors," used in section 30 of the Conveyances Act (J. & A. ¶ 2262), relating to the time when conveyances take effect, means those who, without actual or constructive notice of a prior conveyance or encumbrance, institute such proceedings, as effect a lien on the land before the recording of such conveyance, whether the debt be prior or subsequent to them, and whether the vendor, at the time of conveying or encumbering, had other property sufficient to pay the debtor or not. Noe v. Moutray, 170 Ill. 173; Crawford v. Logan, 97 Ill. 401; McFadden v. Worthington, 45 Ill. 365; Martin v. Dryden, 6 Ill. 217; Sternbach v. Leopold, 50 Ill. App. 499. To the same effect see Thomas v. Burnett, 128 III. 42.

The term "creditors," used in section 30 of the Conveyances Act (J. & A. ¶ 2262), includes judgment creditors. Noe v. Moutray, 170 Ill. 174; McFadden v. Worthington, 45 Ill. 365; Massey v. Westcott, 40 Ill. 163; Martin v. Dryden, 6 Ill. 218.

Liens on Personal Property.

Within the meaning of the rule that owners of personal property retaining possession thereof can give no lien thereon against creditors or subsequent purchasers, except by duly recorded chattel mortgage, the term "creditors" does not mean creditors at large or general creditors, but only such creditors as are armed with an execution or writ of attachment, in the sense that they are authorized to impeach a conveyance or transfer of property by their debtors for fraud, or question the validity of an equitable lien on personal property that

is good against the debtors and their assignees. Union, etc., Co. v. Trumbull, 137 Ill. 180.

CREDITOR'S BILL.

A creditor's bill is a bill seeking to satisfy his debt out of some equitable estate of the defendant which is not liable to a levy and sale on execution at law, after the creditor has obtained judgment and his execution has been returned nulla bona, or where the creditor seeks to remove a fraudulent incumbrance out of the way of his execution. Shufeldt v. Boehm, 96 Ill. 563; Miller v. Davidson, 8 Ill. 522.

A bill in equity, filed by one or more creditors, by and in behalf of him or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due settlement of the estate of a decedent. The usual decree against the executor or administrator is quod computet; that is to say, it directs the master to take the accounts between the deceased and all his creditors, and to cause the creditors, upon due public notice, to come before him to prove their debts at a certain place, and within a limited time; and it also directs the master to take an account of all the personal estate of the deceased in the hands of the executor or administrator. and the same to be applied in payment of the debts and other charges in a due course of administration. 1 Story, Eq. Jur. 442.

CREDITS.

Revenue Act.

The term "credits," as used in the Revenue Act of 1853, means and includes every claim or demand for money, labor, or other valuable thing due, or to become due, or every annuity, or sum of money receivable at stated periods, and all money invested in property of any kind which is secured by deed, mortgage or otherwise, which the person, holding such deed or mortgage or evidence of claim, is bound by any lease, contract or agreement to reconvey, release or assign

upon payment of any specific sum or sums. Act of 1853, § 1047; Board of Supervisors v. Davenport, 40 Ill. 199.

The term "credits," as used in the Revenue Act, includes every claim or demand for money, labor, interest, or other valuable thing, due or to become due, not including money on deposit. Revenue Act, § 292 (J. & A. ¶ 9511); Cooper v. Board of Review, 207 Ill. 475; Sellars v. Barrett, 185 Ill. 471; Griffin v. Board of Review, 184 Ill. 279.

The term "credits," as defined in section 292 of the Revenue Act (J. & A. ¶9511), includes notes and accounts. Sellars v. Barrett, 185 Ill. 472.

Drainage Act.

The word "credits," as used in section 26 of the Act of 1885 (J. & A. ¶ 4502), known as the Farm Drainage Act, relating to special assessments, has reference to the provisions of a prior section, 22 of the same act (J. & A. ¶ 4498), authorizing the commissioners to credit land owners with the value of old ditches on their lands which can be advantageously used in whole or in part, but does not include credits for an illegal tax voluntarily paid. People v. Leonard, 261 Ill. 38.

Garnishment Act.

The term "credits," used in sections 5 and 7 of the Garnishment Act (J. & A. ¶¶ 5940, 5942), is used as the correlative of "debt." Capes v. Burgess, 135 Ill. 67 (aff. 32 Ill. App. 374).

The term "credits," used in sections 5 and 7 of the Garnishment Act (J. & A. ¶¶ 5940, 5942), refers to debts the amount of which is liquidated, and does not include claims which can be rendered certain only by the judgment of a court. Capes v. Burgess, 135 Ill. 67 (aff 32 Ill. App. 374).

CREEK.

In maritime law. Such little inlets of the sea, whether within the precinct or extent of a port or without, which are narrow passages, and have shore on either side of them. Callis, Sew. 56; 5 Taunt. 705.

Such inlets that, though possibly for their extent and situation they might be ports, yet they are either members of or dependent upon other ports. The term imports a recess, cove, bay, or inlet in the shore of a river, and not a separate or independent stream, though sometimes used in the latter meaning. 38 N. Y. 103.

In England the name arose thus: The king could not conveniently have a customer and comptroller in every port or haven; but such custom officers were fixed at some eminent port, and the smaller adjacent ports became by that means creeks, or appendants of that port where these custom officers were placed. 1 Chit. Com. Law, 726; Hale, de Port. Mar. pt. 2, c. 1, vol. 1, p. 46; Comyn, Dig. "Navigation" (C); Callis, Sew. 34.

CREPUSCULUM.

Daylight; twilight. The light which immediately precedes or follows the rising or setting of the sun. 4 Bl. Comm. 224. Housebreaking during the period in which there is sunlight enough to discern a person's face (crepusculum) is not burglary. Coke, 3d Inst. 63; 1 Russ. Crimes, 820; 3 Greenl. Ev. § 75.

CRETIO.

Time for deliberation allowed an heir to decide whether he would or would not take an inheritance. Calv. Lex.; Taylor.

CREW.

A ship's complement of men and officers. "In its general and popular sense, it is equivalent to 'company." In the laws of the United States on maritime subjects, it is sometimes used to comprehend all persons composing the ship's company, including the master; sometimes to comprehend the officers as common seamen, excluding the master; and sometimes to include the common seamen only, excluding the master and officers. But in the last two classes it will be found that the context contains language which explains and limits the gen-

eral to the particular use." 3 Sumn. (U.S.) 209.

CRIM. CON.

An abbreviation for criminal conversation, of very frequent use, denoting adultery; unlawful sexual intercourse with a married woman. Buller, N. P. 27; Bac. Abr. "Marriage" (E 2); 4 Blackf. (Ind.) 157.

CRIME.

Defined.

An offense committed against the public and not merely against a private citizen. People v. Israel, 269 Ill. 287.

In common usage the word "crime" is used to denote an offense of a deeper dye than a misdemeanor. Van Meter v. People, 60 Ill. 170.

Any act or omission prohibited by public law for the protection of the public, and made punishable by the state in a judicial proceeding in its own name. It is a public wrong, as distinguished from a mere private wrong or injury to an individual. 1 Clark & Marshall, Crimes, § 1.

A wrong which the government deems injurious to the public at large, and punishes through a judicial proceeding in its own name. 1 Bish. New Crim. Law, § 32.

An act committed or omitted in violation of a public law either forbidding or commanding it. 4 Bl. Comm. 15. This definition has frequently been quoted with approval, but it is inaccurate. In the first place, it is not the "act omitted" that constitutes a crime, but the omission to act. In the second place, the term "public law" is too broad, for it includes many other laws besides those which define and punish crimes. An act is not necessarily a crime because it is prohibited by a public law. To constitute a crime, it must be punished to protect the public, and must be punished by the state or other sovereign. Clark & Marshall, Crimes, § 1.

Violations of municipal ordinances are generally held not to be crimes, for the reason that such ordinances are not public laws, and the punishment for their violation is imposed by a less authority than the state. 29 Minn. 445; 36 Ala. 261; 47 Ohio St. 481; 55 Wis. 487. Contra, see 75 Mich. 611; 27 Tex. App. 342.

"Crime" is a generic term, including treason, felonies, and misdemeanors; Van Meter v. People, 60 Ill. 168. (31 Wis. 283; 75 Mich. 611; 42 Minn. 258; 48 Ind. 123), though some earlier writers use the term as excluding misdemeanors (4 Bl. Comm. 5.)

Federal Constitution.

The word "crime," as used in the thirteenth amendment to the Constitution of the United States, prohibiting slavery or involuntary servitude "except as a punishment for crime," is so used in its most comprehensive sense, as prohibiting such involuntary servitude as is not inflicted as a punishment for an offense against the law, and includes a violation of a city ordinance. Chicago v. Coleman, 254 Ill. 342.

The thirteenth amendment to the Constitution of the United States, prohibiting slavery or involuntary servitude, except as a punishment for crime, uses the word "crime" in its most comprehensive sense, as prohibiting such involuntary servitude as is not inflicted as a punishment for an offense against the law, but does not apply to such involuntary service as a parent may require of a minor child, or by the state in industrial or reform schools, where such labor is part of the school discipline, or in public institutions for the indigent or defective, nor has the provisions any application to judgments requiring persons to labor in a house of correction in payment of a fine. Chicago v. Coleman, 254 Ill. 342.

"Immorality" Not Synonymous.

The terms "crime" and "immorality" are not synonymous. Maloney v. People, 132 Ill. App. 186.

Misdemeanor Included.

The word "crime" comprehends misdemeanors, and properly speaking, the terms are synonymous. Van Meter v. People, 60 Ill. 170.

Suicide Included.

At common law suicide ranked as a crime, punishable by forfeiture of goods and an ignominious burial. Grand Lodge v. Wieting, 168 Ill. 418.

Practicing Medicine Without License Excluded.

Practicing medicine without a license is not a crime either at common law or under the statutes of this State. People v. Gartenstein, 248 Ill. 550.

Against Nature.

The expression "crime against nature," used in section 47 of division 1 of the Criminal Code (J. & A. ¶ 3560), includes unnatural acts committed by applying the mouth to the person of another, as well as acts strictly within the definition of sodomy. Honselman v. People, 168 Ill. 174.

CRIMEN.

(Lat.) A crime. In the civil law. A charge of crime.

Crimen Falsi.

In civil law. A fraudulent alteration, or forgery, to conceal or alter the truth, to the prejudice of another. This crime may be committed in three ways, namely: by forgery; by false declarations or false oath,—perjury; by acts, as by dealing with false weights and measures, by altering the current coin, by making false keys, and the like. See Dig. 48. 10. 22; Dig. 34. 8. 2; Code, 9. 22; Dig. 2. 5. 9. 11. 16. 17. 23. 24; Merlin, Repert.; 1 Brown, Civ. Law, 426; 1 Phil. Ev. 26; 2 Starkie, Ev. 715.

At common law. Any crime which may injuriously affect the administration of justice, by the introduction of falsehood and fraud. 1 Greenl. Ev. § 373.

The meaning of this term at common law is not well defined. It has been held to include forgery (5 Mod. 74), perjury, subornation of perjury (Co. Litt. 6b; Comyn, Dig. "Testmoigne" [A 5]), suppression of testimony by bribery or conspiracy to procure the absence of a witness (Ryan & M. 434), conspiracy to ac-

cuse of crime (2 Hale, P. C. 277; 2 Leach, C. C. 496; 3 Starkie, 21; 2 Dods. Adm. 191), barratry (2 Salk. 690). The effect of a conviction for a crime of this class is infamy, and incompetency to testify. Statutes sometimes provide what shall be such crimes.

A class of offenses deemed infamous at common law, and including only such as injuriously affect the administration of public justice, such as perjury, subornation of perjury, suppression of testimony by bribery or conspiracy to procure the absence of a witness, or to accuse one wrongfully of a crime, or barratry, or the like, but not including all offenses involving a charge of untruthfulness. Matsenbaugh v. People, 194 Ill. 113.

Crimen Incendii.

In old criminal law. The crime of burning, which included not only the modern crime of arson, or burning of a house, but also the burning of a man, beast, or other chattel. Britt. c. 9; Crabb, Hist. Eng. Law, 308.

Crimen Laesae-Majestatis.

Injuring or violating the majesty of the king's person; any crime affecting the king's person. 4 Bl. Comm. 75.

Crimen Trahit Personam.

The crime carries the person; i. e., the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender. 3 Denio (N. Y.) 190, 210.

CRIMINAL.

The word "criminal," as used in section 26 of article 8 of the Constitution of 1870, in relation to the jurisdiction of the recorder's court of Chicago, means relating to or having the nature of crime. People v. Bradley, 60 Ill. 402.

CRIMINAL AND QUASI CRIMINAL.

Section 26 of article 6 of the Constitution of 1870, giving to the recorder's court of Chicago the jurisdiction of a circuit court in all cases of "criminal and quasi criminal" nature arising in Cook County, confers jurisdiction including every species of case relating to crime, and also such as are regarded by the law "as if" a crime, though a little different. People v. Bradley, 60 Ill. 402.

CRIMINAL ATTEMPT.

Whenever a man, intending to commit a particular crime, does an act toward it, but is interrupted, or some accident intervenes, so that he fails to accomplish what he meant, he is said to have been guilty of a criminal attempt. Graham v. People, 181 Ill. 488.

CRIMINAL CODE.

An act to revise the law in relation to criminal jurisprudence, adopted in 1874. Miller v. Sincere, 273 Ill. 198.

Chapter 38 of the Revised Statutes. People v. O'Brien, 273 Ill. 487; People v. Van Bever, 248 Ill. 140.

An act purporting in its title to amend the "criminal code" uses the quoted expressed as synonymous with "criminal jurisprudence." People v. Van Bever, 248 Ill. 140.

CRIMINAL CONTEMPT.

Acts in disrespect of the court or its process, or tending to bring it into disrepute, or obstruct the administration of justice. Holbrook v. Ford, 153 Ill. 647.

A criminal contempt embraces all acts committed against the majesty of the law or the dignity of the court. Powers v. People, 114 Ill. App. 326. To the same effect see Oster v. People, 192 Ill. 479; People v. Diedrich, 141 Ill. 669.

A prosecution for contempt is criminal in its nature when instituted for the purpose of punishing a person for misconduct in the presence of the court, or with respect to its authority or dignity. People v. Diedrich, 141 Ill. 669.

CRIMINAL INFORMATION.

A criminal suit brought, without the interposition of a grand jury, by the prop-



er officer of the king or state. Cole, Crim. Inf.; 4 Bl. Comm. 398.

CRIMINAL INTENT.

Criminal intent may be manifested by the circumstances connected with the perpetration of the offense without any positive testimony as to such intent. People v. Yuskauskas, 268 Ill. 331.

CRIMINAL JURISPRUDENCE.

That part of the law which relates to crimes and their punishment. Larned v. Tiernan, 110 Ill. 177.

The title to the act known as the Criminal Code, "An act to revise the law in relation to criminal jurisprudence" is broad enough to include provisions defining and fixing the punishment of all imaginable offenses against the public law, and also all proper provisions for the prevention of crimes, for the indictment, trial and conviction of all classes of offenders, and for fixing the jurisdiction, both original and appellate, of the various courts in criminal cases, and prescribing the mode of procedure and the rules of evidence applicable to criminal trials, all being included in the general subject of criminal jurisprudence. Rouse v. Thompson, 228 Ill. 533.

CRIMINAL LAW CONSOLIDATION ACTS.

The English acts (24 & 25 Vict. cc. 94-100) whereby the criminal law of the country was practically codified.

CRIMINAL OFFENSE.

A "criminal offense," within the meaning of the Criminal Code, consists in a violation of a public law in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. Criminal Code, div. 2, § 8 (J. & A. ¶ 3913); Criminal Code of 1874, § 280; Weare, etc., Co. v. People, 209 Ill. 538; Howard v. People, 193 Ill. 617; Spalding v. People, 172 Ill. 55; Meadowcroft v. People, 163 Ill. 69; Wohl-

ford v. People, 148 Ill. 299; Slattery v. People, 76 Ill. 220; Chicago, M. & St. P. Ry. Co. v. People, 132 Ill. App. 534; Story v. People, 79 Ill. App. 565.

The words "criminal offense," used in section 8 of division 2 of the Criminal Code (J. & A. ¶3973), include all misdemeanors, however slight, and all felonies, however great. Conkling v. Whitmore, 132 Ill. App. 579.

CRIMINAL PROCEEDING.

Bastardy Prosecution.

A prosecution for bastardy is not a criminal prosecution, requiring proof of the offense beyond a reasonable doubt. Rawlings v. People, 102 Ill. 478; Maloney v. People, 38 Ill. 62; Pease v. Hubbard, 37 Ill. 259; Mann v. People, 35 Ill. 469.

Contempt Proceeding.

A proceeding to punish for contempt is in the nature of a criminal proceeding. Haines v. People, 97 Ill. 168; Stuart v. People, 4 Ill. 403; Clark v. People, 1 Ill. (Breese) 341.

Quo Warranto.

An information in the nature of quo warranto is a criminal proceeding. People v. Ridgley, 21 Ill. 66.

CROCKARDS, OR CROCARDS.

A foreign coin of base metal, prohibited by St. 27 Edw. I. st. 3, from being brought into the realm. 4 Bl. Comm. 98; Crabb, Hist. Eng. Law, 176.

CROSS.

Elections Act.

The requirement of section 16 of the Act of 1891 (J. & A. ¶ 4908), known as the Ballot Act, relating to the form of ballot, that a voter shall mark his ballot with a "cross" is complied with either by making a mark in the form of a capital X, as provided in the statute, or a mark in the form of a capital T, or by crossing two lines, thus:

+. Parker v. Orr, 158 Ill. 615.

If the lines of the mark made on a

ballot by a voter do not cross or intersect such mark is not a "cross," within the meaning of section 16 of the Act of 1891 (J. & A. ¶ 4908), known as the Bailot Act, relating to the form of ballot, but if such lines do intersect or cross even slightly, within the proper circle or square, the mark complies with the statute. Brents v. Smith, 250 Ill. 527.

If an honest attempt is made by a voter in an appropriate circle or square he will be deemed to have made a "cross" thereon, within the meaning of section 16 of the Act of 1891 (J. & A. ¶ 4908), known as the Ballot Act, relating to the form of ballot, although the mark made was an imperfect cross. Brents v. Smith, 250 Ill. 527; Kerr v. Flewelling, 235 Ill. 330; Winn v. Blackman, 229 Ill. 209; Tandy v. Lavery, 194 Ill. 373; Schuler v. Hogan, 168 Ill. 376; Parker v. Orr, 158 Ill. 615.

CROSS-BILL.

Defined.

A bill brought by a defendant in the suit against the plaintiff in the same suit, or against other defendants in the same suit, or against both, touching the matter in question in the original bill. Vail v. Arkell, 43 Ill. App. 471.

An auxiliary suit concerning the same matters involved in the original bill, which is permitted in order that complete justice may be done between the parties in one proceeding. Thomas v. Thomas, 250 Ill. 362.

A mode of defense. Roby v. South Park Commissioners, 252 III. 582; Newberry v. Blatchford, 106 III. 599.

Function.

The function of a cross-bill is to bring to the attention of the court the necessity of relief to the defendant concerning the subject matter of the litigation different from that sought by the complainant, or the necessity of obtaining discovery or to bring forward facts occurring subsequently to the filing of the answer which are material to the defense, but its function is limited to cases where complete justice cannot be done on the bill and

answer. Roby v. South Park Commissioners, 252 Ill. 582. To the same effect see Newberry v. Blatchford, 106 Ill. 599.

Nature.

A cross-bill is generally considered as a defense to the original bill or as a proceeding necessary to a complete determination of a matter already in litigation, or as a mere auxiliary suit, or as a dependency upon the original suit. Sterl v. Sterl, 2 Ill. App. 227.

A cross-bill is to be regarded as an adjunct or part of the original suit, and the whole together as constituting but one case. Fleece v. Russell, 13 Ill. 32; Harding v. Olson, 76 Ill. App. 484.

As Original Suit.

Although a cross-bill must be germane to the subject matter of the original bill, it is in form, and so far as practice is concerned, a separate and distinct suit, commenced by filing the cross-bill. Thomas v. Thomas, 250 Ill. 362; Ballance v. Underhill, 4 Ill. 462.

CROSS-REMAINDERS.

Remainders limited after particular estates to two or more persons in several parcels of land, in such way that on the determination of the particular estates in any of the several parcels or undivided shares they remain over to the other grantees, and the reversioner or ulterior remainderman is not let in till the determination of all the particular estates. Addicks v. Addicks, 266 III. 352.

Where a particular estate is conveyed to several persons in common, and, upon the termination of the interest of either of them, his share is to remain over to the rest, and the reversioner or remainder man is not to take till the termination of all the estates, the parties take as tenants in common, with cross remainders between them. 4 Cruise, Dig. 249; 1 Hilliard, Real Prop. 650. It is not an essential quality of cross remainders that the original estates should be held in 1 Prest. Est. 94; 2 Washb. common. Real Prop. Index.

CROSS RULES.

These were rules where each of the opposite litigants obtained a rule nisi, as the plaintiff to increase the damages, and the defendant to enter a nonsuit. Wharton.

CROSSING AND THE AP-PROACHES THERETO.

The expression "crossing and the approaches thereto," used in section 8 of the act of 1874 (J. & A. ¶ 8820), relating to the fencing and operation of railroads, includes the surface occupied by such portion of the railroad track as is within the boundaries of the street, together with such additional surface as is occupied by embankments, bridges, grades, or structures of any sort on each side of the railroad track, which serve as a passage or way for approaching the crossing. Chicago, B. & Q. R. Co. v. Sample, 138 Ill. App. 98.

CROWN OFFICE.

The criminal side of the court of king's bench. The king's attorney in this court is called "master of the crown office." 4 Bl. Comm. 308.

CROWN OFFICE IN CHANCERY.

One of the offices of the English high court of chancery, now transferred to the high court of justice. The principal official, the clerk of the crown, is an officer of parliament, and of the lord chancellor, in his nonjudicial capacity, rather than an officer of the courts of law. Rep. Leg. Dep. Comm. 39. His principal dutiès are to make out and issue writs of summons and election for both houses of parliament, and to keep the custody of poll books and ballot papers. Nearly all patents passing the great seal, except those for inventions (Great Seal Act, 1880), are made out in his office, and he makes out the warrants for almost all letters patent under the great seal. See "Patent." He also does the duties formerly performed by the clerk of the Hanaper. They chiefly consisted in collecting fees, but have now ceased almost entirely. He is registrar of the lord high steward's court. Second Rep. Leg. Dep. Comm. 39; Rep. Comm. on Fees, 5; 2 & 3 Wm. IV. c. 3; 3 & 4 Wm. IV. c. 84; 15 & 16 Vict. c. 87; 37 & 38 Vict. c. 81.

CROWN SOLICITOR.

In England, the solicitor to the treasury acts, in state prosecutions, as solicitor for the crown in preparing the prosecution. In Ireland there are officers called "crown solicitors" attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown "procurator-fisprosecutor (called the cal," and being a subordinate of the lord-advocate) in every county, who prepares every criminal prosecution. Wharton.

CRUDE PETROLEUM.

A substance consisting of a number of different oils, all more or less volatile, which are separated from each other by a process of distillation. Kings Co., etc., Co. v. Swigert, 11 Ill. App. 598.

CRUELTY.

Cruelty, as applied to the relations of husband and wife, is such conduct in one or the other of the married parties as endangers, either apparently or in fact, the physical safety or health of the other to a degree rendering it physically or mentally impracticable for the endangered party to discharge properly the duties imposed by the marriage. Sharp v. Sharp, 16 Ill. App. 349.

CRUISE.

A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail in any particular track at a certain season of the year. The region in which these cruises are performed is usually termed the "rendezvous," or "cruising-latitude." When the ships employed for this purpose, which are accordingly called "cruisers," have arrived at the destined station, they traverse the sea backwards and forwards, under an easy sail, and within a limited space, conjectured to be in the track of their expected adversaries. Weskett, Ins.; Lex Merc. Rediv. 271, 284; Doug. 509; Park, Ins. 58; Marsh. Ins. 196, 199, 520; 2 Gall. (U. S.) 268.

CUCKING STOOL.

An engine or machine for the punishment of scolds and unquiet women. Called, also, a "trebucket," "tumbrill," and "castigatory." Bakers and brewers were formerly also liable to the same punishment. Being fastened in the machine, they were immersed over head and ears in some pool. Blount; Coke, 2d Inst. 219; 4 Bl. Comm. 168.

CUI LICET QUOD MAJUS NON DEBET QUOD MINUS EST NON LICERE.

He who has authority to do the more important act shall not be debarred from doing that of less importance. 4 Rep. 23; Co. Litt. 355 b; 2 Inst. 307; Noy, Max. 26; Finch, Law, 22; 3 Mod. 382, 392; Broom, Leg. Max. (3d London Ed.) 165; Dig. 50, 70, 21.

CUICUNQUE ALIQUIS QUID CON-CEDIT CONCEDERE VIDETUR ET ID, SINE QUO RES IPSA ESSE NON POTUIT.

Whoever grants a thing is supposed also tacitly to grant that without which the grant itself would be of no effect. 11 Coke, 52; Broom, Leg. Max. (3d London Ed.) 426; Hob. 234; Vaughan, 109; 11 Exch. 775; Shep. Touch. 89; Co. Litt. 56a.

CUL DE SAC.

A street open at one end only. Carlin v. Chicago, 262 Ill. 566.

CULPA.

A fault; negligence. Jones, Bailm. 8. Culpa is to be distinguished from dolus, the latter being a trick for the purpose of deception, the former merely negligence. There are three degrees of culpa: Lata culpa, gross fault or neglect; levis culpa, ordinary fault or neglect; levissima culpa, slight fault or neglect, and the definitions of these degrees are precisely the same as those in our law. Story, Bailm. § 18.

CULPA LEVISSIMA.

Slight negligence. Chicago, R. I. & P. Ry. Co. v. Hamler, 215 Ill. 535.

CULPABLE.

In an action for personal injuries, it is not error to instruct the jury that if certain facts are found they shall find defendant guilty of "culpable" negligence, the quoted word being used in the sense of "blamable." Peoria & P. U. Ry. Co. v. Clayberg, 107 Ill. 651.

CULPRIT.

A person who is guilty, or supposed to be guilty, of a crime. When a prisoner is arraigned, and he pleads not guilty, in English practice, the clerk, who arraigns him on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove the accusation. This is done by writing two monosyllabic abbreviations,—cul. prit. 4 Bl. Comm. 339; 1 Chit. Crim. Law, 416. See Christian's note to Bl. Comm. cited. The technical meaning has disappeared, and the compound is used in the popular sense as above given.

CUM DUO INTER SE PUGNANTIA REPERIUNTUR IN TESTAMEN-TO, ULTIMUM RATUM EST.

When two things repugnant to each other are found in a will, the last is to be confirmed. Co. Litt. 112; Shep. Touch. 451; Broom, Leg. Max. (3d London Ed.) 518; 1 Jarm. Wills (2d Ed.) 394; 16 Johns. (N. Y.) 146; 1 Phil. 536.

CUM ONERE.

With the burden; subject to the incumbrance; subject to the charge. A purchaser with knowledge of an incumbrance takes the property cum onere. Co. Litt. 231a; 7 East, 164; Paiey, Ag. 175.

The rule that an assignee of a lease takes it "cum onere," means, by the quoted expression, that he takes and holds it subject to the agreements agreed to be performed by the lessee. Consolidated, etc., Co. v. Peers, 166 Ill. 373.

CUM PAR DELICTUM EST DUOR-UM, SEMPER ONERATUR PE-TITOR, ET MELIOR HABE-TUR POSSESSORIS CAUSA.

Where two parties are equally in fault, the claimant always is at a disadvantage, and the party in possession has the better cause. Dig. 50. 17, 154; Broom, Leg. Max. (3d London Ed.) 644.

CUMULATIVE EVIDENCE.

Evidence which merely multiplies witnesses to any one or more of those facts before investigated, or only adds other circumstances of the same general character. Aholtz v. Durfee, 25 Ill. App.

Cumulative evidence is additional evidence of the same kind to the same point.

MacNeil's Ill. Evidence 504.

CUMULATIVE REMEDY.

A remedy created by statute in addition to one which still remains in force. Mackin v. Haven, 187 Ill. 494; Chicago & N. W. Ry. Co. v. Chicago, 148 Ill. 160.

Where a statute gives a new remedy and contains no negative, express or implied, of the old remedy, the new one provided by it is cumulative. Mackin v. Haven, 187 Ill. 494; Chicago & N. W. Ry. Co. v. Chicago, 148 Ill. 160.

A second or additional mode of procedure in addition to one already available, as opposed to alternative remedy. Wharton.

CUR.

A common abbreviation of curia. 1 Inst. Cler. 9.

CURB.

The common meaning of the word "curb," as applied to a street, is a stone or row of stones, or a similar construction of concrete, wood or other material, along the margin of the roadway, as a limit to the roadway and a restraint upon and protection to the adjoining sidewalk space. Lyman v. Cicero, 222 Ill. 381.

CURB LINE.

The dividing line between the roadway and that portion reserved on each side of the roadway for the use of pedestrians. Chicago v. Oak Park, 225 Ill. 12; Wetmore v. Chicago, 206 Ill. 368; Topliff v. Chicago, 196 Ill. 217.

CURED BY VERDICT.

The expression "cured by verdict" signifies that the court will, after a verdict, presume or intend that the particular thing which appears to be defectively or imperfectly stated or omitted in the pleadings, was duly proved at the trial, the intendment arising not merely from the verdict but from the united effect of the verdict and the issue on which it was given, but the particular thing presumed must always be such as may be implied from the allegations by a fair and reasonable intendment. Walters v. Ottawa, 240 Ill. 265; Bowman v. People, 114 Ill. 477; Chicago & A. R. Co. v. Eselin, 86 Ill. App. 98.

CURFEW.

(French, couvre, to cover, and feu, fire.) This is generally supposed to be an institution of William the Conqueror, who required, by ringing of the bell at eight o'clock in the evening, that all lights and fires in dwellings should then be extinguished. But the custom is evidently older than the Norman; for we find an order of King Alfred that the in-

habitants of Oxford should, at the ringing of that bell, cover up their fires and go to bed. And there is evidence that the same practice prevailed at this period in France, Normandy, Spain, and probably in most of the other countries of Europe. Heary, Hist. Brit. vol. 3, 567. It was : doubtless intended as a precaution ground; a close. St. Edw. Conf. 1, 6; against fires, which were very frequent and destructive when most houses were built of wood.

That it was not intended as a badge of infamy is evident from the fact that the law was of equal obligation upon the nobles of the court and upon the nativeborn seris. And yet we find the name "curfew law" employed as a by-word denoting the most odious tyranny.

It appears to have met with so much opposition that in 1103 we find Henry I. repealing the enactment of his father or the subject; and Blackstone says that, though it is mentioned a century afterwards, it is rather spoken of as a time of night, than as a still subsisting custom. Shakespeare frequently refers to it in the same sense. This practice is still pursued, in many parts of England and in this country, as a very convenient mode of apprising people of the time of night.

CURIA.

In Roman Law.

One of the divisions of the Roman people. The Roman people were divided by Romulus into three tribes and thirty curiae. The members of each curia were united by the tie of common religious rites, and also by certain common political and civil powers. Dion. Hal. lib. 2, p. 82; Liv. lib. 1, c. 13; Plut. in Romulo, p. 30; Festus Brisson, in Verb.

In later times the word signified the senate or aristocratic body of the provincial cities of the empire. Festus Brisson, in Verb.; Ort. Histoire, No. 25, 408; Ort. Inst. No. 125.

The senate house at Rome; the senate house of a provincial city. Code, 10. 31. 2: Spelman.

In English Law.

The king's court: the palace; the royal household. The residence of a noble; a | corn. Cowell; Blount.

manor or chief manse; the hall of a man-Speiman. OT.

A court of justice, whether of general or special jurisdiction. Fleta, lib. 2, 1. 72, § 1; Spelman; Cowell; 3 Bl. Comm. c. iv. See "Court."

A courtyard or inclosed piece of , Bracton, 76, 222b, 335b, 356b, 358; Spelman. See "Curia Claudenda."

The civil or secular power, as distinguished from the church. Spelman.

CURIA ADVISARE VULT.

(Lat.) The court wishes to consider the matter.

In Practice.

The entry formerly made upon the record to vindicate the continuance of a cause until a final judgment should be rendered.

It is commonly abbreviated thus: Cur. adv. vult.

CURIA COMITATUS.

(Law Lat.) In old English law. The court of the county; the county court, or court of the shire (Saxon, scyregemot), in the Saxon times.

CURIA LEGITIME AFFIRMATA.

(Law Lat.) In old Scotch practice. Court lawfully opened, or opened in due form. A formal phrase used in the captions of records. 3 How. St. Tr. 654; 1 Pitc. Crim. Tr. pt. 1, p. 143.

CURIA REGIS.

(Lat. the king's court). A term applied to the aula regis, the bancus or communis bancus, and the iter or eyre, as being courts of the king, but especially to the aula regis (q. v.)

CURNOCK.

In old English law. A measure containing four bushels or half a quarter of

CURRENCY.

Defined.

Bank bills, or other paper money, which passes as a circulating medium in the business community, as and for the constitutional coin of the country. Osgood v. McConnel, 32 Ill. 77; Galena, etc., Co. v. Kupfer, 28 Ill. 335.

That description of bank bills which supply the place of money. Galena, etc., Co. v. Kapfer, 28 Ill. 335.

Bank bills, or other paper money issued by authority, which pass as and for coin. Marine Bank v. Rushmore, 28 Ill. 476; Chicago, etc., Co. v. Keiron, 27 Ill. 506; Swift v. Whitney, 20 Ill. 146.

Coin, or such bank notes as pass freely in commercial transactions and regarded nearly equivalent to coin. Webster v. Pierce, 35 Ill. 163. To the same effect see Marine, etc., Co. v. Tincher, 30 Ill. 403.

Primary Meaning.

The word "currency" primarily signifies a passing or flowing—something which flows along or passes from hand to hand. Caton, C. J., separate opinion Chicago, etc., Co. v. Keiron, 27 Ill. 506.

As Applied to Medium of Exchange.

The word "currency," in its broad and comprehensive meaning, may be properly used with reference to things of different values, when applied to the medium of exchange of property, but so used does not necessarily mean cash, but is equally applicable to anything which is used as a circulating medium, and is generally accepted in trade as a representative of values of property. Caton, C. J., separate opinion Chicago, etc., Co. v. Keiron, 27 Ill. 506.

Implies Cash.

Currency is the value of cash, and excludes the idea of depreciated paper money. Marine, etc., Co. v. Tincher, 30 Ill. 403.

Legal Meaning.

The term "currency" has a specific, legal and well known meaning, that can-

not be contradicted or explained. Marc by. Kupfer, 34 Ill. 293; Osgood v. McConnell, 32 Ill. 77.

"Money" Synonymous.

A note payable in "currency" is payable in money. Trowbridge v. Seaman, 21 Ill. 102; Swift v. Whitney, 20 Ill. 146.

CURRENT ACCOUNT.

An account which can be added to or drawn upon at any time without notice to the banker. Estate of Ramsey v. Whitbeck, 81 Ill. App. 218.

CURRENT BILLS.

The term "current bills" has a specific, legal and well known meaning, that cannot be contradicted or explained. Marc v. Kupfer, 34 Ill. 293; Osgood v. McConnell, 32 Ill. 78.

CURRENT EXPENSES.

The expression "current expenses," used in section 37 of the act of 1879 (J. & A. ¶ 4418), known as the Levee Act, as amended in 1909, relating to the payment of expenses of commissioners under the act, includes the per diem allowed to drainage commissioners, attorneys' fees and court costs. Meridian, etc., District v. Wiss, 258 Ill. 602.

The expression "current expenses," used in section 37 of the act of 1879 (J. & A. ¶ 4418), known as the Levee Act, as amended in 1909, relating to the payment of expenses of commissioners under the act, is equivalent to "running expenses," and means any continuing, regular expenditures in connection with the carrying on of business for which the municipality is organized. Meridian, etc., District v. Wiss, 258 Ill. 602.

CURRENT FUNDS.

Defined.

Current money; par funds, or money circulating without any discount. Galena, etc., Co., v. Kupfer, 28 Ill. 335,



Imports Cash.

"Current funds" signifies cash, or paper money equivalent thereto. Wood v. Price, 46 Ill. 437.

Imports Money.

A check or draft payable in "current funds" is payable in current money, par funds, or money circulating without any discount, and not in depreciated bank paper. Marc v. Kupfer, 34 Ill. 292; Galena, etc., Co. v. Kupfer, 28 Ill. 335.

CURRENT MONEY.

Lawful money; whatever passes current for money, whether coin or paper money. 27 Ill. 501; 9 Mo. 701; 8 Minn. 329.

In commercial use, "currency" is confined to paper money, as distinguished from "specie" or coin money. 14 Mich. 379; 12 Wall. (U. S.) 657.

CURRENT YEAR.

The expression "current year," used in section 3 of the act of 1883 (J. & A. ¶ 9942), relating to the levy of taxes for hard roads, refers to the year in which the amount of the tax for each year would fall due. People v. Illinois C. R. Co., 237 Ill. 158.

CURSITOR.

A junior clerk in the court of chancery, whose business it formerly was to write out from the register those forms of writs which issued of course. Such writs were called writs de cursu (of course), whence the name, which had been acquired as early as the reign of Edward III. The body of cursitors constituted a corporation, each clerk having a certain number of counties assigned to him. Coke, 2d Inst. 670; 1 Spence, Eq. Jur. 238.

CURSITOR BARON.

An officer of the court of exchequer, who is appointed by patent under the

great seal to be one of the barons of the exchequer. The office is abolished by St. 19 & 20 Vict. c. 86. Wharton.

CURSUS CURIAE EST LEX CURIAE.

The practice of the court is the law of the court. 3 Bulst. 53; Broom, Leg. Max. (3d London Ed.) 126; 12 C. B. 414; 17 Q. B. 86; 8 Exch. 199; 2 Maule & S. 25; 15 East, 226; 12 Mees. & W. 7; 4 Mylne & C. 635; 3 Scott, N. R. 599.

CURTESY.

At common law, when a man marries a woman seized at any time during coverture of an estate of inheritance, and hath issue by her, born alive, and which might by possibility inherit the same estate as heir to the wife, and the wife dies in the lifetime of the husband, he holds the land during his life by the curtesy of England. Jackson v. Jackson, 144 Ill. 281; Cole v. Van Riper, 44 Ill. 65.

CURTESY INITIATE.

An estate vested in the husband. Mc-Neer v. McNeer, 142 Ill. 396. To the same effect see Shortall v. Hinckley, 31 Ill. 226.

Where there was marriage, seizin of the wife and birth of issue capable of inheriting, the husband, by the common law, took an estate in the wife's land during coverture. This was an estate of tenancy by the curtesy initiate, and which would become consummate upon the death of the wife in the lifetime of the tenant. Upon the death of the wife, a tenant by the curtesy was seized of an estate of freehold, which was subject to alienation, and was liable to be taken on execution for his debts. Tiedeman on Real Prop. sec. 101; Howey v. Goings, 13 Ill. 95; Jacobs v. Rice, 33 Ill. 371; Cole v. Van Riper, 44 Ill. 58; Beach v. Miller, 51 Ill. 206; Lang v. Hitchcock, 99 Ill. 550; Bozarth v. Largent, 128 Ill. 102-103.

CURTILAGE.

The inclosed space immediately surrounding a dwelling house, contained within the same inclosure.

It is defined by Blount as a yard, backside, or piece of ground near a dwelling house, in which they sow beans, etc., yet distinct from the garden. Blount; Spelman. By others it is said to be a waste piece of ground so situated. Cowell.

It has recently been defined as "a fence or inclosure of a small piece of land around a dwelling house, usually including the buildings occupied in connection with the dwelling house, the inclosure consisting either of a separate fence or partly of a fence and partly of the exterior of buildings so within this inclosure." 10 Cush. (Mass.) 480.

The term is used in determining whether the offense of breaking into a barn or warehouse is burglary. See 4 Bl. Comm. 224; 1 Hale, P. C. 558; 2 Russ. Crimes, 13; 1 Russ. Crimes, 790; Russ. & R. 289; 1 Car. & K. 84; 10 Cush. (Mass.) 480.

In Michigan the meaning of curtilage has been extended to include more than an inclosure near the house. 2 Mich. 250.

CUSTODES.

Keepers; guardians; conservators. Custodes pacis, guardians of the peace. 1 Bl. Comm. 349. Custodes libertatis Angliae auctoritate parliamenti, guardians of the liberty of England by authority of parliament. The style in which writs and all judicial process ran during the grand rebellion, from the death of Charles I. till Cromwell was declared protector. Jacob.

CUSTODIAM LEASE.

In English law. A grant from the crown under the exchequer seal, by which the custody of lands, etc., seized in the king's hands, is demised or committed to some person as custodee or lessee thereof. Wharton.

CUSTOM.

Defined

Something which has the force and effect of law by the usage and consent of

the people. Klaub v. Vokoun, 169 Ill. App. 440; Swern v. Churchill, 155 Ill. App. 508.

Not Part of Law.

A custom does not become part of the law of a place, but part of the contracts performed at the place. Dixon v. Dunham, 14 III. 327.

Elements.

A custom, to raise the presumption that parties have contracted with reference to it, must not be in opposition to any principle of general policy, or the established principles of law, or the terms of the agreement, and must be ancient, certain, uniform, reasonable and generally acted on. Wilson v. Bauman, 80 Ill. 493; Bissell v. Ryan, 23 Ill. 522; Calland v. Trapet, 70 Ill. App. 231; Sweet v. Leach, 6 Ill. App. 214. To the same effect see Coffman v. Campbell, 87 Ill. 102; Leggat v. Sands, etc., Co., 60 Ill. 163; Turner v. Dawson, 50 Ill. 86; Crawford v. Clark, 15 Ill. 567; Dixon v. Dunham, 14 Ill. 328; Klaub v. Vokoun, 169 Ill. App. 440; Swern v. Churchill, 155 Ill. App. 508; Packer v. Pentecost, 50 Ill. App. 230; Converse v. Harzfeldt, 11 Ill. App. 178.

An essential element in every custom is its reasonableness. Mulliner v. Bronson, 14 Ill. App. 364.

Foreign.

In absence of proof, courts will proceed on presumption that customs and usages of a foreign country are the same as those of its own jurisdiction. Demster v. Stephen, 63 Ill. App. 126.

Distinguished from Usage.

While words, usages and customs are generally used synonymously in legal writings and in popular language, they have not entirely the same significance. "Customs" as applied to the conduct of men, does include usage but does not necessarily include custom. A custom is such usage as, by common consent and uniform practice, has become the law of the place where it exists, or of the subject matter to which it relates. Usage

is a method of dealing adopted in a particular place or by those engaged in a particular vocation or trade, which acquires legal force because people make contracts with reference to it. MacNeil's Ill. Evidence 382.

Distinguished from Prescription.

It differs from prescription, which is personal, and is annexed to the person of the owner of a particular estate; while the other is local, and relates to a particular district. An instance of the latter occurs where the question is upon the manner of conducting a particular branch of trade at a certain place; of the former, where a certain person and his ancestors, or those whose estates he has, have been entitled to a certain advantage or privilege, as to have common of pasture in a certain close, or the like. 2 Bl. Comm. 263.

As Method of Dealing With Facts.

A custom must be a method of dealing with facts, and not a conclusion as to the rules of law pertaining to those facts. Caliand v. Trapet, 70 III. App. 232.

Purpose.

Customs are instituted and admitted to promote the interests and convenience of trade under the supposition that the slight inconvenience which one class suffers by reason of them is more than counterbalanced by the benefits to another class, and that the inducements thus offered compensate the lesser loss. Dixon v. Dunham, 14 Ill. 328.

The proper office of a custom or usage in business, is to ascertain and explain the intent of the parties. Wilson v. Bauman, 80 Ill. 495; Bissell v. Ryan, 23 Ill. 521; Calland v. Trapet, 70 Ill. App. 231; Sweet v. Leach, 6 Ill. App. 214. To the same effect see U. S., etc., Co. v. Advance Co., 80 Ill. 552.

CUSTOM OF MERCHANTS.

A system of customs acknowledged and taken notice of by all nations, and which are therefore a part of the general law of the land. See "Law Merchant;" 1 Chit. Bl. Comm. 76, note 9.

CUSTOM OF PARIS.

A modified form of the civil law. Trustees of Commons v. McClure, 167 Ill. 33.

CUSTOMARY.

According to usage. Smiley v. East St. Louis Ry. Co., 256 Ill. 486.

An adjective frequently occurring in contracts, qualifying such words as "discharge," "dispatch," and "practice," and so used means practically the same as "usual." Smiley v. East St. Louis Ry. Co., 256 Ill. 486.

CUSTOMARY ESTATES.

Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl. Comm. 149.

CUSTOMARY FREEHOLD.

A class of freeholds held according to the custom of the manor, derived from the ancient tenure in villein socage. Holders of such an estate have a freehold interest, though it is not held by a freehold tenure. 2 Bl. Comm. 149.

CUSTOMARY SERVICE.

A service due by ancient custom or prescription only. Such is, for example, the service of doing suit at another's mill, where the persons resident in a particular place, by usage, time out of mind have been accustomed to grind corn at a particular mill. 3 Bl. Comm. 234.

CUSTOMARY TENANTS.

(Law Lat. custumarii tenentes.) In English law. Such tenants as hold by the custom of the manor, as their special evidence. Termes de la Ley. Copyholders belong to this class. 2 Bl. Comm. 147, 148.

CUSTOMARY USE.

Defined.

The use of anything for the purpose and in the manner such thing is usually and ordinarily used. Smiley v. East St. Louis Ry. Co., 256 Ill. 487.

Of Street.

The customary, or usual and ordinary, use of a street is for travel from one point to another by the usual and lawful modes of travel. Smiley v. East St. Louis Ry. Co., 256 Ill. 487.

When applied to the use of a street, the word "customary" refers to the mode or manner in which the street is used. Smiley v. East St. Louis Ry. Co., 256 Ill. 486.

CUSTOMERS.

Persons who have dealings with one who is engaged in an occupation or employment. Olson v. Ostby, 178 Ill. App. 176.

CUSTOMS AND SERVICES.

(Law Lat. consuetudines et servitia.) In old English law. Services which the tenants of lands, under the feudal law, owed to their lords, and which, if withheld, the lord might resort to the writ of customs and services (breve de consuetudinibus et servitiis) to compel them. Tomlin.

CUSTOMS CONSOLIDATION ACT.

St. 16 & 17 Vict. c. 107, which has been frequently amended. See 2 Steph. Comm. 563.

CUSTOMS OF LONDON.

Particular regulations in force within the city of London, in regard to trade, apprentices, widows and orphans, etc., which are recognized as forming part of the English common law. 1 Bl. Comm. 75.

CUSTOS BREVIUM.

(Lat.) Keeper of writs. An officer of

is to receive and keep all the writs returnable to that court, and put them upon file, and also to receive of the prothonotaries all records of nisi prius, called posteas. Blount. An officer in the king's bench, having similar duties. Cowell Termes de la Ley. The office is now abolished.

CUSTOS ROTULORUM.

(Lat.) Keeper of the rolls. The principal justice of the peace of a county, who is the keeper of the records of the county, 1 Bl. Comm. 349. He is always a justice of the peace and quorum, is the chief civil officer of the king in the county, and is nominated under the king's sign manual. He is rather to be considered a minister or officer than a judge. Blount; Cowell; Lambard, Eiren, lib. 4, c. 3, p. 373; 4 Bl. Comm. 272; 3 Steph. Comm. 37.

CUSTUMA ANTIQUA SIVE MAGNA.

(Lat. ancient or great duties.) duties on wool, sheepskin, or wool pelts and leather exported were so called, and were payable by every merchant stranger as well as native, with the exception that merchant strangers paid one-half as much again as natives. 1 Sharswood, Comm. 314.

CUSTUMA PARVA ET NOVA.

(Lat.) An impost of three pence in the pound sterling on all commodities exported or imported by merchant strangers. Called at first the "Alien's duty," and first granted by St. 31 Edw. I. Maddox, Hist. Exch. 526, 532; 1 Sharswood, Bl. Comm. 314.

CUTPURSE.

(Law Lat. bursarum scissor; Law Fr. cynsour de burse.) In old criminal law. An offender answering to the modern pickpocket. Fleta, lib. 1, c. 36, § 11.

CY PRES.

A rule of construction applied to a will the court of common pleas, whose duty it | by which, where the testator evinces a particular and a general intention and the particular intention cannot take effect, the word shall be so construed as to give effect to the general intention. Miller v. Riddle, 130 Ill. App. 396.

The doctrine of "cy pres," as applied to wills, means an approximation of the intention of the testator, as nearly as possible. Mason v. Bloomington, etc., Ass'n, 237 Ill. 450; Ingraham v. Ingraham, 169 Ill. 464; Andrews v. Andrews, 110 Ill. 232; Heuser v. Harris, 42 Ill. 486; Quimby v. Quimby, 175 Ill. App. 371; Taylor v. Keep, 2 Ill. App. 383.

The principle is applied to sustain wills in which perpetuities are attempted to be created, so that, if it can possibly be done, the devise is not regarded as utterly void, but is expounded in such a manner as to carry the testator's intention into effect as far as the law respecting perpetuities will allow. This is called a construction cy pres. Its rules are vague, and depend chiefly upon judicial discretion applied to the particular case. Sedgw. Const. Law, 265; Story, Eq. Jur. § 1169 et seq.

It is also applied to sustain devises and bequests for charity. Where there is a definite charitable purpose which cannot take place, the courts will not substitute another, as they once did; but if charity be the general substantial intention, though the mode provided for its execution fails, the English chancery will find some means of effectuating it, even by applying the fund to a different purpose from that contemplated by the testator, provided only it be charitable. Boyle, Char. 147, 155; Shelf. Mortm. 601; 3 Brown, Ch. 379; 4 Ves. 14; 7 Ves. 69, 82.

CYNEBOTE.

(Saxon, from cyn, kin, or relationship, and bot, a satisfaction.) In Saxon law. A pecuniary composition for killing a relative; the same with cenegild. Spelman, voc. "Cenegild."

CYPHONISM.

A punishment used by the ancients,

smearing of the body with honey, and exposing the person to flies, wasps, etc. But the author of the notes on Hesychius says it is derived from the Greek to bend or stoop, and signifies that kind of punishment still used by the Chinese, called by Sir George Staunton "the wooden collar," by which the neck of the malefactor is bent or weighed down. Enc. Lond.; Wharton.

DAILY.

Every day. A newspaper published six days in each week, whether Sunday or Monday be the day omitted, is held to be a "daily newspaper." 45 Minn. 27.

DALE AND SALE.

Fictitious names of places, used in the English books as examples. Perk. c. 2, "The manor of Dale and the manor of Sale, lying both in Vale." Bac. Abr. "Case of Revocation of Uses;" Perk. c. 3, § 230.

DALUS, DAILUS, OR DAILIA.

A certain measure of land; such narrow slips of pasture as are left between the plowed furrows in arable land. Cowell.

DAMAGE CLEER.

The tenth part in the common pleas, and the twentieth part in the king's bench and exchequer courts, of all damages beyond a certain sum, which was to be paid the prothonotary or chief officer of the court in which they were recovered before execution could be taken out. At first it was a gratuity, and of uncertain proportions. Abolished by St. 17 Car. II. c. 6. Cowell; Termes de la Ley.

DAMAGE FEASANT.

(Fr. faisant dommage, doing damage.) A term usually applied to the injury which animals belonging to one person do which some suppose to have been the | upon the land of another by feeding there,

and treading down his grass, corn, or other production of the earth. 3 Bl. Comm. 6; Co. Litt. 142, 161.

DAMAGE.

Hurt; injury; loss. Chicago & P. R. Co. v. Francis, 70 Ill. 239.

DAMAGED.

Property Taken for Public Use.

The term "damaged," used in section 13 of the Constitution of 1870, relating to the rights of persons whose property has been taken for public use, refers to a damage not merely exceeding in amount the damage sustained by the public generally, but to a damage greater in kind—that is, greater by reason of its peculiar nature. Chicago v. Burcky, 158 Ill. 108; Parker v. Catholic Bishop, 146 Ill. 168; East St. Louis v. O'Flynn, 119 Ill. 206; Chicago v. Union, etc., Ass'n, 102 Ill. 393; Rigney v. Chicago, 102 Ill. 81.

Constitution of 1870.

The term "damaged," used in section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, means damaged specially and individually, in a manner not common to the public. Chicago & W. I. R. Co. v. Ayres, 106 Ill. 517; Chiles v. Alton etc. Co., 158 Ill. App. 512; Metropolitan W. S. E. R. Co. v. Goll, 100 Ill. App. 332.

The intention of the legislature, in adding the word "damaged" in section 18 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, to the word "taken," as used in section 11 of article 13 of the Constitution of 1848, was to require compensation in all cases where, but for legislative authority to do the act complained of, an action would lie at common law. Aldrich v. Metropolitan W. S. E. Ry. Co., 195 Ill. 460; North Shore S. Ry. Co. v. Payne, 192 Ill. 246; Barrows v. Sycamore, 150 Ill. 595; Rigney v. Chicago, 102 Ill. 81; Metropolitan W. S. E. R. Co. v. Goll, 100 Ill. App. 331. Property is "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, where the tracks of a steam railroad company are elevated in such fashion as to obstruct ingress and egress to such property. Chicago v. Jackson, 196 Ill. 505; Chicago v. Pulcyn, 129 Ill. App. 181.

The term "damaged," used in section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, refers to the damage to the whole tract in question, so that where an improvement has the effect of cutting a tract in two parts, the question is of the damage to the tract not taken, considered as a whole, and not to the two remaining parts. Shawneetown v. Mason, 82 Ill. 344; Page v. Chicago M. & St. P. Ry. Co., 70 Ill. 328.

The term "damaged," used in section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, contemplates an actual diminution of the present value or price of the property, rendering it less valuable in the market, if offered for sale. Shawneetown v. Mason, 82 Ill. 342; Page v. Chicago M. & St. P. Ry. Co., 70 Ill. 328; Chicago & P. R. Co. v. Francis, 70 Ill. 240.

The word "damaged," used in section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for use, refers to real, and not to speculative damages. Chicago M. & St. P. Ry. Co. v. Hall, 90 Ill. 46; Hyde Park v. Dunham, 85 Ill. 572; Shawneetown v. Mason, 82 Ill. 342; Eberhart v. Chicago M. & St. P. Ry. Co., 70 Ill. 349; Page v. Chicago M. & St. P. Ry. Co., 70 Ill. 328; Chicago & P. R. Co. v. Francis, 70 Ill. 240.

The addition of the word "damaged," used in section 13 of article 2 of the Constitution of 1870, relating to the rights of those whose property is taken for public use, to the word "taken," as used in section 11 of article 13 of the Constitution of 1848, is indicative of a deliberate purpose to change the organic law of the state, and declare a rule of conduct dif-

ferent from that declared by the Constitution of 1848, from which springs new rights not formerly existing. Chapman v. Staunton, 246 Ill. 397; Aldrich v. Metropolitan W. S. E. Ry. Co., 195 Ill. 460; Rigney v. Chicago, 102 Ill. 75.

A tract of land is "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, by the extension of a street through such tract, so as to cut it into two parts. Washington, etc., Co. v. Chicago, 147 Ill. 333.

The term "damaged," used in section 13 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, refers to the pecuniary loss or injury which lessens the value of the property. West Side E. R. Co. v. Stickney, 150 Ill. 383; Elgin v. Eaton, 83 Ill. 537; Shawneetown v. Mason, 82 Ill. 344; Chicago & P. R. Co. v. Francis, 70 Ill. 239.

Property is not "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, by temporary obstructions in a public street, made necessary by the construction of a public improvement, although occasioning inconvenience, loss or expense to abutters. Chicago, etc., Co. v. Chicago, 243 Ill. 271; Lefkovitz v. Chicago, 238 Ill. 29; Osgood v. Chicago, 154 Ill. 198.

Property is "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property has been taken for public use, by the act of a sanitary district in reducing the level of water in the Chicago River, so that canals leading from the river to property of plaintiffs were obstructed. Beidler v. Sanitary District, 211 Ill. 639.

Property is "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, relating to the rights of persons whose property is taken for public use, when its value is depreciated by the erection and operation of an elevated railroad in the street in front of the property. Aldis v. Union E. R. Co., 203 Ill. 572; Doane v. Lake Street E. R. Co., 165 Ill. 518.

Property is not "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, relating to a rights of persons whose property is taken for public use, by the construction of a small pox hospital in the vicinity, although resulting in the depreciation of the value of plaintiff's land, where the hospital is erected by a city on its own land, and where there is no unwarranted abuse of discretion in locating or maintaining it, having reference to present necessities, the crowded condition of the locality where it is placed, and other pertinent facts and circumstances. Frazer v. Chicago, 186 Ill. 490.

Property is "damaged," within the meaning of section 13 of article 2 of the Constitution of 1870, relating to the rights of those whose property is taken for public use, by a change of grade of a street in front of such property. Grant Park v. Trah, 218 Ill. 519; Chicago v. Jackson, 196 Ill. 505; Joliet v. Blower, 155 Ill. 416; Bloomington v. Pollock, 141 lll. 349; Elgin v. Eaton, 83 Ill. 536.

DAMAGES.

A compensation, recompense or satisfaction to the plaintiff, for an injury actually received by him from the defendant. Holmes v. Holmes, 64 Ill. 297.

Dramshop Act.

An instruction in an action under section 9 of the Dramshop Act (J. & A. ¶ 4609) that if it appeared that defendants disregarded notice from the wife of the deceased not to sell liquors to him then if they found plaintiff entitled to "damages," exemplary damages might be assessed for disregarding the notice is not misleading as authorizing the assessment of exemplary damages although no actual damages were sustained, because of the fact that the word "actual" was omitted in the instruction before the word "damages." Killham v. Chaloupka, 195 Ill. App. 186.

Liquidated.

Damages are said to be liquidated where they can be determined from the

contract itself or from the contract and the rules of law applicable thereto, and where it is necessary to introduce evidence before plaintiff can prove his case, the damages are said to be unliquidated. Lepman & Heggie v. Inter-State Produce Co., 205 Ill. App. 270.

Unliquidated.

Unliquidated damages are such as are unascertained, as those arising out of a breach of a contract where the amount of damages has not been determined by agreement. Marks v. American Furniture Novelty Co., 208 Ill. App. 186.

DAMAGES WITHOUT INJURY.

Damages suffered without the invasion of a legal right or the violation of a legal duty. Gillman v. Chicago Rys. Co., 268 Ill. 309.

DAMNI INJURIAE ACTIO.

(Lat.) In civil law. An action for the damage done by one who intentionally injured the beast of another. Calv. Lex.

DAMNOSA HAEREDITAS.

A name given by Lord Kenyon to that species of property of a bankrupt which, so far from being valuable, would be a charge to the creditors; for example, a term of years, where the rent would exceed the revenue.

The assignees are not bound to take such property; but they must make their election, and, having once entered into possession, they cannot afterwards abandon the property. 7 East, 342; 3 Campb. 340.

DAMNUM ABSQUE INJURIA.

An inconvenience or loss suffered by one as the result of the lawful use of a neighbor's property is damnum absque injuria. Metropolitan W. S. E. R. Co. v. Goll, 100 Ill. App. 334.

(Lat. injury without wrong.) A wrong done to a man for which the law provides no remedy. Broom, Leg. Max.

Damage sustained without the infraction of a legal right. 25 Conn. 265; 103
 Ind. 314.

Injuria is here to be taken in the sense of "legal injury;" and, where no malice exists, there are many cases of wrong or suffering inflicted upon a man for which the law gives no remedy. 2 Ld. Raym. 595; 11 Mees. & W. 755; 11 Pick. (Mass.) 527; 10 Metc. (Mass.) 371. Thus, if the owner of property in the prudent exercise of his own right of dominion, does acts which cause loss to another, it is damnum absque injuria. 2 Barb. (N. Y.) 168; 5 Barb. (N. Y.) 79; 10 Metc. (Mass.) 371; 10 Mees. & W. 109.

What Constitutes.

The building of a jail, police station, or the like, a case of damnum absque injuria, as to an obstruction in a public street,—if it does not practically affect the use or enjoyment of neighboring property. Aldrich v. Metropolitan W. S. E. Ry. Co., 195 Ill. 463; Rigney v. Chicago, 102 Ill. 80.

DAN.

Anciently the better sort of men in England had this title; so the Spanish Don. The old term of honor for men, as we now say Master or Mister. Wharton.

DANELAGE.

The laws of the Danes which obtained in the eastern counties and part of the midland counties of England in the eleventh century. 1 Bl. Comm. 65.

DANGEROUS WEAPON.

A weapon calculated to cause death or great bodily harm. Guns, swords, knives, and the like, are dangerous weapons, as a matter of law. 110 N. C. 497; 1 Baldw. (U. S.) 78. Others are dangerous or not, according to their capability of causing great bodily harm in the manner in which they are used. Thus, a champagne bottle (33 Ga. 207), a chair (3 Tex. App. 13), a club (104 N. C. 786),

a stone (10 Minn. 407) or a shovel (17 S. C. 55) may be a dangerous weapon.

DARREIN SEISIN.

(Law Fr. last seisin.) A plea which lay in some cases for the tenant in a writ of right. 3 Metc. (Mass.) 184; Jackson, Real Actions, 285. See 1 Roscoe, Real Actions, 206; 2 Prest. Abstr. 345.

DATA.

(From Lat. dare, to give.) In old practice and conveyancing. The date of a deed; the time when it was given; that is, executed. Bl. Comm. Append. 1.

The date of a writ; the time when it was issued. Bracton, fol. 176.

DATE.

The designation or indication in an instrument of writing of the time and place when and where it was made.

When the place is mentioned in the date of a deed, the law intends, unless the contrary appears, that it was executed at the place of the date. Plowd. 7b. The word is derived from the Latin datum, given; because, when instruments were in Latin, the form ran datum, etc., given the — day of, etc.

The date of an instrument is that stated therein as that of its execution, rather than the actual time of execution. 32 N. J. Law, 515.

DATION EN PAIEMENT.

In civil law. A giving by the debtor and receipt by the creditor of something in payment of a debt instead of a sum of money.

It is somewhat like the accord and satisfaction of the common law. 16 Toullier, Dr. Civ. note 45; Poth. Vente, note 601. Dation en paiement resembles in some respects the contract of sale; dare in solutum est quasi vendere. There is, however, a very marked difference between a sale and a dation en paiement. First, the contract of sale is complete by the mere agreement of the parties;

the dation en paiement requires a delivery of the thing given. Second, when the debtor pays a certain sum which he supposed he was owing, and he discovers he did not owe so much, he may recover back the excess; not so when property other than money has been given in payment. Third, he who has in good faith sold a thing of which he believed himself to be the owner is not precisely required to transfer the property of it to the buyer; and, while he is not troubled in the possession of the thing, he cannot pretend that the seller has not fulfilled his obligations. On the contrary, the dation en paiement is good only when the debtor transfers to the creditor the property in the thing which he has agreed to take in payment; and if the thing thus delivered be the property of another, it will not operate as a payment. Poth Vente, notes 602-604. See 1 Low. (U. 8.) 53.

DATUM.

A certain monument or object, of a permanent character, which has been adopted by the municipality as a base or starting point for the grades or levels of the municipality. Chicago, etc., Co. v. Oak Park, 225 Ill. 14.

DAY.

Defined.

Twenty-four hours. Zimmerman v. Cowan, 107 Ill. 637; People v. Hatch, 33 Ill. 137.

A division of time. People v. Hatch, 33 Ill. 137.

Ordinary Meaning.

The word "day" ordinarily means twenty-four hours, from midnight till the following midnight. People v. Keating, 247 Ill. 78.

The space of time which elapses while the earth makes a complete revolution on its axis. A portion of such space of time which, by usage or law, has come to be considered as the whole for some particular purpose. The space of time which elapses between two successive midnights. 2 Bl. Comm. 141.

Generally, in legal signification, the term includes the time elapsing from one midnight to the succeeding one (2 Bl. Comm. 141), but it is also used to denote those hours during which business is ordinarily transacted, frequently called a "business" day (5 Hill [N. Y.] 437), as well as that portion of time during which the sun is above the horizon, called, sometimes, a "solar" day, and, in addition, that part of the morning or evening during which sufficient of his light is above for the features of a man to be reasonably discerned. Coke, 3d Inst. 63.

By custom, the word "day" may be understood to include working days only (3 Esp. 121), and, in a similar manner only, a certain number of hours less than the number during which the work actually continued each day (5 Hill [N. Y.] 437).

A day is generally, but not always, regarded in law as a point of time, and fractions will not be recognized. 15 Ves. 257; 2 Barn. & Ald. 586. And see 9 East, 154; 4 Campb. 397; 11 Conn. 17.

As Meaning from Sunrise to Sunset.

The term "day" does not always mean twenty-four hours, but is frequently used to designate the time from sunrise to sunset. People v. Keating, 247 Ill. 78.

Natural Day.

A natural day consists of twenty-four hours, or the space of time which elapses while the earth makes a complete revolution on its axis. People v. Hatch, 33 Ill. 137. To the same effect see Aimo v. People, 122 Ill. App. 400.

Artificial Day.

An artificial day contains the time from the rising until the setting of the sun, and a short time before rising and after setting. People v. Hatch, 33 Ill. 137.

Employment Act.

It is within the power of the legislature to declare what shall be a day for particular purposes, as for example, section 1 of the act of 1867 (J. & A. [5286), providing that eight hours of labor, between the rising and setting of the sun, in all mechanical trades, arts and employments, shall constitute a day. People v. Keating, 247, Ill. 78.

Courts Act.

Section 17 of the act of 1874 (J. & A. ¶3015), relating to circuit courts, providing that if no judge shall attend before four o'clock on the afternoon of the second "day" of a regular or special term of the court it shall stand adjourned till the next succeeding term, does not mean, by the quoted word, a space of twentyfour hours, but mean, that portion of time from midnight, the close of the first day of the term, till four o'clock in the afternoon of the second day, so that a placita reciting that a term of such court convened on such second "day" means that it convened before the legal expiration of such day. People v. Keating, 247 Ill. 79.

Election Act.

Section 79 of the Election Act (J. & A. 14805), forbidding the sale of liquor on any election "day," means, by the quoted word, the natural day of twenty-four hours, commencing and terminating at midnight, and not merely the hours of the day during which the polls are open. Aimo v. People, 122 Ill. App. 400.

When Not Indivisible Unity.

There is no indivisible unity about a day which prevents considering its component hours, in legal proceedings where it becomes important to the ends of justice, the rule that the law knows no divisions of a day being purely one of convenience, which must give way whenever the rights of parties require it. Grosvenor v. Magill, 37 Ill. 241.

Term of Court As.

A term of court is regarded, in law, as but one day or a unit of time, and all acts done within the term are regarded as contemporaneous. People v. Wells, 255 Ill. 453; Krieger v. Krieger, 221 Ill. 484.

DAY RULE, OR DAY WRIT.

A rule or order of the court by which a prisoner on civil process, and not committed, is enabled, in term time, to go out of the prison and its rule or bounds. Tidd, Prac. 961. Abolished by 5 & 6 Vict. c. 22, § 12.

DAY TIME.

The time between sunrise and sun-setting. Swisher v. Illinois C. R. Co., 182 Ill. 543.

DAYBREAK.

The dawn or first appearance of light in the morning; the time of the first appearance of light in the morning. Sullivan v. Chicago C. Ry. Co., 167 Ill. App. 159.

DAYLIGHT.

The daytime; between sunrise and sunset. 4 Bl. Comm. 224. Sufficient light, of day, to distinguish a man's features. 11 Car. & P. 297; 11 E. C. L. 398.

An insurance policy requiring lamps to be filled by daylight was held to mean not that they must be filled in the daytime, but that they must not be filled by artificial light. 134 U. S. 110.

DAYS.

Section 21 of article 4 of the Constitution of 1848, providing that a bill passed by the general assembly shall become law if not returned by the governor within ten "days," with his approval or objections, means, by the word "days" days of the full length of twenty-four hours each, and not parts of days. People v. Hatch, 33 Ill. 136.

Section 113 of the Elections Act (J. & A. ¶4840), providing that one desiring to contest an election shall file a certain statement with the clerk of the proper court within thirty "days," means, by the word "days," ordinary days of twenty four hours. Zimmerman v. Cowan, 107 Ill. 636.

DE ADMENSURATIONE.

Of admeasurement. Used of the writ of admeasurement of dower, which lies where the widow has had more dower assigned to her than she is entitled to. It is said by some to lie where either an infant heir or his guardian made such assignment, at suit of the infant heir whose rights are thus prejudiced. 2 Bl. Comm. 136; Fitzh. Nat. Brev. 348. It seems, however, that an assignment by a guardian binds the infant heir, and that, after such assignment, the heir cannot have his writ of admeasurement. 2 Ind. 388; 1 Pick. (Mass.) 314; 37 Me. 509; 1 Washb. Real Prop. 226.

Used also of the writ of admeasurement of pasture, which lies where the quantity of common due each one of several having rights thereto has not been ascertained. 3 Bl. Comm. 38.

DE AETATE PROBANDA.

(Law Lat.) Writ of (about) proving age. An old writ which lay to the escheator or sheriff of a county to summon a jury to inquire whether the heir of a tenant in capite, claiming his estate on the ground of full age, was, in fact, of age or not. Reg. Orig. 294; Fitzh. Nat. Brev. 257.

DE ALTO ET BASSO.

Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. Cowell; 2 Reeve, Hist. Eng. Law, 90.

DE ANNO BISSEXTILI.

Of the bissextile or leap year. The title of a statute passed in the twenty-first year of Henry III., which in fact, however, is nothing more than a sort of writ or direction to the justices of the bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the essoin de malo lecti, and the like. It was thereby directed that the

additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 Reeve, Hist. Eng. Law, 266.

DE ATTORNATO RECIPIENDO.

(Lat. for receiving an attorney.) A writ to compel the judges to receive an attorney and admit him for the party. Fitzh, Nat. Brev. 156b.

DE AUDIENDO ET TERMINANDO.

For hearing and determining; to hear and determine.

The name of a writ or commission granted to certain justices to hear and determine cases of heinous misdemeanor, trespass, riotous breach of the peace, etc. Reg. Orig. 123 et seq.; Fitzh. Nat. Brev. 110 (B).

DE AVERIIS CAPTIS IN WITHER-NAM.

(Lat. for cattle taken in withernam.) A writ which lies to take other cattle of the defendant where he has taken and carried away cattle of the plaintiff out of the country, so that they cannot be reached by replevin. Termes de la Ley; 3 Sharswood, Bl. Comm. 149.

DE BIGAMIS.

Concerning men twice married. The title of St. 4 Edw. I. st. 3; so called from the initial words of the fifth chapter. 2 Inst. 272; 2 Reeve, Hist. Eng. Law, 142.

DE BONIS NON ADMINISTRATIS.

(Law Lat. of the goods not administered.) Where the administration of the estate of an intestate is left unfinished, in consequence of the death, removal, etc., of the administrator, and a new administrator is appointed, the latter is termed an administrator de bonis non; i. e., of the goods of the deceased not adminis- | (B 3); 2 Archb. Prac. 148.

tered by the former administrator. Steph. Comm. 243. An administrator of this kind is also sometimes appointed to succeed an executor. 2 Steph. Comm. 243.

DE BONIS NON AMOVENDIS.

(Law Lat.) Writ for not removing goods. A writ anciently directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his goods and chattels were safely kept without being removed, while the error remained undetermined, so that execution might be had of them, etc. Reg. Orig. 131 b; Termes de la Ley. This seems to have been a local writ.

DE BONIS PROPRIIS.

(Lat. of his own goods.) A judgment against an executor or administrator which is to be satisfied from his own property.

When an executor or administrator has been guilty of a devastavit, he is responsible for the loss which the estate has sustained de bonis propiis. He may also subject himself to the payment of a debt or the deceased de bonis propiis by his false plea when sued in a representative capacity; as, if he plead plene administravit, and it be found against him, or a release to him when false. In this latter case the judgment is de bonis testatoris si, et si non de bonis propriis. 1 Wm. Saund. 336b, note 10; Bac. Abr. "Executor" (B 3).

DE BONIS TESTATORIS AC SI.

(Lat.) From the goods of the testator, if he has any, and, if not, from those of the executor. A judgment rendered where an executor falsely pleads any matter as a release, or, generally, in any case where he is to be charged in case his testator's estate is insufficient. Wm. Saund. 366b; Bac. Abr. "Executor"

DE CHAR ET DE SANK.

(Law Fr. of flesh and blood.) Affaire rechat de char et de sank. Words used in claiming a person to be a villein, in the time of Edward II. Y. B. P. 1 Edw. II. p. 4.

DE CLAMIA ADMITTENDA IN ITINERE PER ATTORNATUM.

(Law Lat.) An ancient writ, by which the king commanded the justices in eyre to admit a person's claim by attorney, who was employed in the king's service, and could not come in his own person. Reg. Orig. 19b.

DE CONJUNCTIM FEOFFATIS.

Concerning persons jointly enfeoffed or seised. The title of St. 34 Edw. I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them. 2 Reeve, Hist. Eng. Law, 243.

DE CONTRIBUTIONE FACIENDA.

(Law Lat.) Writ for making contribution. A writ, founded on the statute of Maribridge (chapter 9), to compel coparceners, or tenants in common, to aid the eldest in performing the services due by him, or to make contribution, where the services had been already performed. Reg. Orig. 176b; Fitzh. Nat. Brev. 162 (B), (C); 2 Reeve, Hist. Eng. Law, 327; 3 Reeve, Hist. Eng. Law, 55; Crabb, Hist. Eng. Law, 212.

DE CONTUMACE CAPIENDO.

(Law Lat.) Writ for taking a contumacious person. A writ which issues out of the English court of chancery in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. Shelf. Mar. & Div. 494-496, and notes. It is a commitment for contempt. Id. 504, 505; 5 Adol. & E. (N. S.) 335.

DE CUSTODIA TERRAE ET HAEREDIS

Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in socage, to recover the possession and custody of the infant, or the wardship of the land and heir. Reg. Orig. 161b; Fitzh. Nat. Brev. 139 (B); 3 Bl. Comm. 141.

DE DEBITORE IN PARTES SECANDO.

Of cutting a debtor in pieces. This was the name of a law contained in the Twelve Tables, the meaning of which has occasioned much controversy. Some commentators have concluded that it was literally the privilege of the creditors of an insolvent debtor (all other means failing) to cut his body into pieces and distribute it among them. Others contend that the language of this law must be taken figuratively, denoting a cutting up and apportionment of the debtor's estate.

The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius, and Taylor. Esprit des Lois, liv. 29, c. 2; Bynk. Obs. Jur. Rom. lib. 1, c. 1; Heinec. Ant. Rom. lib. 3, tit. 30, § 4; Tayl. Comm. Leg. Dec. The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (semoto omni cruciatu) in the Roman code itself. Aul. Gel. Noctes Atticae, lib. 20, c. 1: Code, 7. 7. 8. This is also the opinion of Gibbon, Gravina, Pothier, Hugo, and Niehbuhr. 3 Gib. Rom. Emp. (Am. Ed.) p. 183; Grav. de. Jur Nat. Gent. et XII. Tab. § 72; Poth. Introd. ad Pand.; Hugo, Hist. du Droit Rom. tom. i. p. 233, § 149; 2 Niehb. Hist. Rom. p. 597; 1 Kent, Comm. 523, note.

DE DOMO REPARANDA.

(Lat.) The name of an ancient common-law writ, by which one tenant in common might compel his cotenant to concur in the expense of repairing the property held in common. 8 Barn. & C. 269; 1 Thomas, Co. Litt. 216, note 17, and page 787.

DE DONIS, THE STATUTE.

(More fully, de bonis conditionalibus, concerning conditional gifts.) St. Edw. I. c. 1.

The object of the statute was to prevent the alienation of estates by those who held only a part of the estate in such a manner as to defeat the estate of those who were to take subsequently. By introducing perpetuities, it built up great estates, and strengthened the power of the barons. See Bac. Abr. "Estates Tail;" 1 Cruise, Dig. 70; 1 Washb. Real Prop. 271.

DE DOTE UNDE NIHIL HABET.

(Lat. of dower in that whereof she has none.) A writ of dower which lay for a widow where no part of her dower had been assigned to her. It is now much disused; but a form closely resembling it is still much used in the United States. 4 Kent. Comm. 63; Stearns, Real Actions, 302; 1 Washb. Real Prop. 230.

DE EJECTIONE CUSTODIAE.

(Law Lat.; Law Fr. ejectment de gard). Writ of ejectment of ward. A writ which lay where a guardian had been forcibly ejected from his wardship. Reg. Orig. 162.

DE EJECTIONE FIRMAE.

A writ which lay at the suit of the tenant for years against the lessor, reversioner, remainder-man, or stranger who had himself deprived the tenant of the occupation of the land during his term. 3 Bl. Comm. 199. Originally lying to recover damages only, it came to be used to recover the rest of the term, and then generally the possession of lands. Involving, in the question of who should have possession, the further question of who had the title, it gave rise to the modern action of ejectment. Brooke, Abr.; Adams, Ej.; 3 Sharswood, Bl. Comm. 199 et seq.

DE ESTOVERIIS HABENDIS.

(Lat. to obtain estovers.) A writ which lay for a woman divorced a mensa et thoro to recover her alimony or estovers.

1 Bl. Comm. 441.

DE ESTREPAMENTO.

(Law Lat.) Writ of estrepement. A writ to prevent or stop the commission of waste in lands by a tenant during the pendency of a suit against him for their recovery. Reg. Orig. 76b; Fitzh. Nat. Brev. 60; 3 Bl. Comm. 225, 226. Abolished by St. 3 & 4 Wm. IV. c. 27. See "Estrepement."

DE EU ET TRENE.

(Law Fr.) Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villein, as employed in servile work, and subject to corporal punishment. Co. Litt. 25b.

DE EXCUSATIONIBUS.

(Lat. of excuses.) The first title of the twenty-seventh book of the Digests is so denominated, as treating of the circumstances which would excuse persons from serving in the offices of tutor or curator. It is made up, in a great degree, of extracts from the Greek work of Herennius Modestinus on the subject.

DE EXECUTIONE JUDICII.

(Law Lat.) Writ of execution of judgment. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. Reg. Orig. 18; Fitzh. Nat. Brev. 20; 3 Reeve, Hist. Eng. Law, 56.

DE FACTO CORPORATION.

Corporation.

A corporation is a de facto corporation where there is a law authorizing such a corporation, and where the company has made an effort to organize under law and is transacting business in a corporate

name. Imperial, etc., Co. v. Board of Trade, 238 III. 108; Marshall v. Keach, 227 III. 43. To the same effect see Cozzens v. Chicago, etc., Co., 166 III. 216; Hudson v. Green Hill Seminary, 113 III. 626.

DE FACTO OFFICER.

Lord Ellenborough's Definition.

One who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. Howard v. Burke, 248 Ill. 228; Waterman v. Chicago & I. R. Co., 139 Ill. 665.

Elements.

In order that there may be a de facto corporation two things are essential: first, a law under which the corporation might lawfully have been created; second, user. American Co. v. Minnesota & N. W. R. Co., 157 Ill. 652; Chicago Open Board Of Trade v. Imperial, etc., Co., 136 Ill. App. 612; The Joliet v. Frances 85 Ill. App. 250. To the same effect see Lincoln Park Chapter v. Swatek, 105 Ill. App. 609.

A de facto officer is distinguished on the one hand from a mere usurper of an office, and on the other hand from an officer de jure. He is one who is an actual possession of an office under the claim and color of an election or appointment, and is in the exercise of its functions in the discharge of its duties. In short, in order to be a de facto officer, there must be color for the claim and a colorable title to the office. To be an officer de facto one must be in actual possession of the office under claim and color of an election or appointment, and in the exercise of its functions and discharge of its duties. He must hold office under some degree of notoriety, and exercise continuous acts of an official char-3 Fletcher Cyclopedia Corporaacter. tions 3029.

Origin of Doctrine.

The de facto doctrine was introduced into law as a matter of policy and necessity to protect the interests of the public where those interests were involved in the for which he was taken an required such a judgment if fully convicted thereof. 2 Eng. Law, 290; 2 Inst. 589.

official acts of persons exercising the duties of an officer without being a lawful officer. People v. McCauley, 256 Ill. 510.

"Officer De Jure" Distinguished.

A de facto officer is distinguished on the one hand from a mere usurper of an office, and on the other hand from an officer de jure. He is one who is in actual possession of an office under the claim and color of an election or appointment, and is in the exercise of its functions and in the discharge of its duties. Waterman v. Chicago & I. R. R. Co., 139 Ill. 665.

What Constitutes.

A mere claim to be a public officer and exercising the office will not constitute one an officer de facto; there must be at least a fair color of right or an acquiescence by the public in his official acts so long that he will be presumed to act as an officer either by right of appointment or election. Howard v. Burke, 248 Ill. 228.

DE FALSO MONETA.

Of false money. The title of St. 27 Edw. I., ordaining that persons importing certain coins, called "pollards," and "crokards," should forfeit their lives and goods, and everything they could forfeit. 2 Reeve, Hist. Eng. Law, 228, 229.

DE FINIBUS LEVATIS.

Concerning fines levied. The title of St. 27 Edw. I., requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 Inst. 521; Barr. Obs. St. 176.

DE FRANGENTIBUS PRISONAM.

Concerning those that break prison. The title of St. 1 Edw. II., ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 Reeve, Hist. Eng. Law, 290; 2 Inst. 589.

DE IIS QUI PONENDI SUNT IN ASSISIS.

Of those who are to be put on assizes. The title of a statute passed 21 Edw. I., defining the qualifications of jurors. Crabb, Hist. Eng. Law, 167, 189; 2 Reeve, Hist. Eng. Law, 184.

DE INJURIA.

(Lat.) The full form is de injuria sua propria absque tali causa, of his own wrong without such cause; or, where part of the plea is admitted, absque residuo causae, without the rest of the cause.

In Pleading.

The replication by which in an action of tort the plaintiff denies the effect of excuse or justification offered by the defendant.

It can only be used where the defendant pleads matter merely in excuse and not in justification of his act. It is confined to those instances in which the plea neither denies the original existence of the right which the defendant is charged with having violated, nor alleges that it has been released or extinguished, but sets up some new matter as a sufficient excuse or cause for that which would otherwise and in its own nature be wrong-It cannot, therefore, be properly used when the defendant's plea alleges any matter in the nature of title, interest, authority, or matter of record. 8 Coke, 66; 1 Bos. & P. 76; 4 Johns. (N. Y.) 159, note; 5 Johns. (N. Y.) 112; 12 Johns. (N. Y.) 491; 1 Wend. (N. Y.) 126; 8 Wend. (N. Y.) 129; 25 Vt. 328; Steph. Pl. 276.

DE JUDAISMO, STATUTUM.

The name of a statute passed in the reign of Edward I., which enacted severe penalties against the Jews. Barr. Obs. St. 197.

DE JUDICIIS.

Of judicial proceedings. The title of the second part of the Digests or Pandects, including the fifth, sixth, seventh, eighth, ninth, tenth, and eleventh books. See Dig. proem. § 3.

DE LICENTIA TRANSFRETANDI.

Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. Reg. Orig. 193b.

DE MAGNA ASSISA ELIGENDA.

(Law Lat.) Writ of or for choosing the grand assize. A writ directed to the sheriff to summon four lawful knights, before the justices of assize, there upon their oaths, to choose twelve knights of the vicinage to be joined with them, which sixteen knights constituted the grand assize, or great jury, which was to try the matter of right in a writ of right. Reg. Orig. 8; Fitzh. Nat. Brev. 4 (F); 3 Bl. Comm. 351. Abolished by St. 3 & 4 Wm. IV. c. 27. See "Grand Assize."

DE MALO LECTI.

(Law Lat.; Law Fr. de mal de lyt.) Of infirmity or illness of (in) bed. Closely rendered, in old Scotch law, bed-evil (bede-evill). A species of essoin or excuse for nonappearance in court, formerly allowed a defendant in England, and more anciently called de infirmitate de reseantisa; the excuse being that the defendant was confined to his house in bed (lectus) by infirmity or indisposition (malum). Glanv. lib. 1, c. 18, 19; Bracton, fol. 337, 344b; Britt. cc. 122, 123; Fleta, lib. 6, c. 10; 1 Reeve, Hist. Eng. Law, 115, 412; Skene de Verb. Sign. voc. "Researtisa." This essoin commonly followed immediately upon that de malo veniendo; for where a person, having been detained on the road by sickness, and having cast the essoin de malo veniendi, had found himself obliged to return home, the order of essoins, conformably with what was likely to be the real fact, led to the essoin de malo lecti.

Reeve, Hist. Eng. Law, 412; Bracton, fol. 344b.

DE PRAEROGATIVA REGIS.

(Law Lat. of the king's prerogative.) The title of St. 17 Edw. II. st. 1, defining the prerogatives of the crown on certain subjects, partly of a feudal and partly of a political or general nature. Crabb, Hist. Eng. Law, 204 et seq.; Barr. Obs. St. 202; Hale, Hist. Com. Law, c. 8.

DE REBUS.

Of things. The title of the third part of the Digests or Pandects, comprising the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth books.

DE REDISSEISINA.

Writ of redisseisin. A writ which lay where a man recovered, by assize of novel disseisin, land, rent, or common, and the like, and was put in possession thereof by verdict, and afterwards was disseised of the same land, rent, or common by him by whom he was disseised before. Reg. Orig. 206b; Fitzh. Nat. Brev. 188 (B).

DE SCACCARIO.

Of or concerning the exchequer. The title of a statute passed in the fifty-first year of Henry III. 2 Reeve, Hist. Eng. Law, 61.

DE TALLAGIO NON CONCEDENDO.

(Lat. of not allowing talliage.) The name given to St. 34 Edw. I., restricting the power of the king to grant talliage. Coke, 2d Inst. 532; 2 Reeve, Hist. Eng. Law, 104.

DE TESTAMENTIS.

Of testaments. The title of the fifth part of the Digests or Pandects; comprising the twenty-eighth to the thirty-sixth books, both inclusive.

DE VENTRE INSPICIENDO.

(Lat. of inspecting the belly.) A writ to inspect the body, where a woman feigns to be pregnant, to see whether she is with child. It lies for the heir presumptive to examine a widow suspected to be feigning pregnancy in order to enable a supposititious heir to obtain the estate. 1 Bl. Comm. 456; 2 Steph. Comm. 308; Cro. Eliz. 556; Cro. Jac. 685; 2 P. Wms. 593; 21 Viner, Abr. 547.

It lay also where a woman sentenced to death pleaded pregnancy. 4 Bl. Comm. 495. This writ has been recognized in America. 2 Chand. Am. Crim. Tr. 381.

DE VERBORUM SIGNIFICATIONE.

Of the signification of words. An important title of the Digests or Pandects (Dig. 50. 16), consisting entirely of definitions of words and phrases used in the Roman law, compiled from the writings of the best jurists, such as Ulpian, Paulus, Pomponius, Gaius, Scaevola, Javolerus, Celsus, Alfenus, Florentinus, Callistratus, and others.

DEAD BORN.

A dead-born child is to be considered as if it had never been conceived or born; in other words, it is presumed it never had life, it being a maxim of the common law that mortuus exitus non est exitus. Co. Litt. 29b. See 2 Paige, Ch. (N. Y.) 35; Domat, liv. prel. tit. 2, § 1, notes 4, 6; 4 Ves. 334.

This is also the doctrine of the civil law. Dig. 50. 16. 120. Non nasci, et natum mori, pari sunt, not to be born, and to be born dead, are equivalent. Mortuus exitus non est exitus, a dead birth is no birth. Civ. Code La. art. 28.

DEAD ENGINE.

One without steam, with a part of its machinery disconnected, and which is drawn the same as regular cars. Wabash R. Co. v. Thomas, 117 Ill. App. 111.

DEAD FREIGHT.

The amount paid by a charterer for that part of the vessel's capacity which he does not occupy, although he has contracted for it.

When the charterer of a vessel has shipped part of the goods on board, and is not ready to ship the remainder, the master, unless restrained by his special contract, may take other goods on board, and the amount which is not supplied, required to complete the cargo, is considered dead freight. The dead freight is to be calculated according to the actual capacity of the vessel. 3 Chit. Com. Law, 399; 2 Starkie, 450.

DEAD MAN'S PART.

That portion of the personal estate of a person deceased which, by the custom of London, became the administrator's.

If the decedent left wife and children, this was one-third of the residue after deducting the widow's chamber. If only a widow, or only children, it was one-half.

1 P. Wms. 341; Salk. 246. If neither widow nor children, it was the whole. 2 Show. 175. This provision was repealed by St. 1 Jac. II. c. 17, and the same made subject to the statute of distributions. 2 Sharswood, Bl. Comm. 5. 8.

DEAD RENT.

A rent payable on a mining lease in addition to a royalty. So called because it is payable, although the mine may not be worked. Wharton.

DEADLY FEUD.

(Lat. faida mortalis, or mortifera). A profession of irreconcilable hatred against an enemy, until revenge were obtained even by his death. This was allowed by the ancient Saxon laws, where a man had been killed, and no pecuniary satisfaction had been made to his kindred. Spelman, voc. "Faida." The term was also applied to the predatory warfare carried on in the northern borders of England. St. 43 Eliz. c. 13; 4 Bl. Comm. 244.

DEADLY WEAPON.

Defined.

Any weapon likely to produce death; any weapon or instrument by which death may be produced; a weapon dangerous to life, likely to produce bodily injury from the use made of it, likely to produce death or great bodily harm; a weapon or instrument as is made and designed for the destruction of life, or the infliction of injury. Schwarz v. Poehlmann, 178 Ill. App. 237.

A weapon likely to produce death or great bodily harm by the use made of it. Schwarz v. Poehlmann, 178 Ill. App. 238; McNary v. People, 32 Ill. App. 62.

Bottle.

An assault with a bottle sixteen inches in length is an assault with a "deadly weapon," within the meaning of section 25 of division 1 of the Criminal Code (J. & A. §3507). Sleeting v. Supreme Tribe, 161 Ill. App. 454.

Sling.

A piece of rubber hose twenty-one inches in length, and 1½ inches in diameter, plugged at each end with pieces of wood, used as a slung shot, is a "deadly weapon" within the meaning of section 1 of the act of 1881 (J. & A. ¶3582), relating to the possession or sale of such weapons. Schwarz v. Poehlmann, 178 Ill. App. 236.

Hoe.

An assault with a hoe is an assault with a "deadly weapon" within the meaning of section 25 of the Criminal Code (J. & A. ¶3507). Hamilton v. People, 113 Ill. 38.

DEAD'S PART.

In Scotch law. The part remaining over beyond the shares secured to the widow and children by law. Of this the testator had the unqualified disposal. Stair, Inst. lib. iii. tit. 4, § 24; Bell, Dict.; Paterson, Comp. §§ 674, 848, 902,

DEALER.

One who buys to sell again. 27 Pa. St. 495.

DEALING.

The assignment of a due bill payable in whisky or wine does not constitute a dealing in intoxicating liquors. Schweyer v. Oberkoetter, 25 Ill. App. 187.

DEALINGS.

Transactions in the course of business. Two sales of goods by one to a firm constitute "dealings" with it, so as to entitle one to notice of dissolution. 2 Barb. (N. Y.) 549.

Within the meaning of the rule that notice of a dissolution of partnership must be given to those having "dealings" with the firm in order to release a retiring partner from liability for transactions subsequently carried on under the firm name, the word "dealings" is not confined to any particular sort of transaction, but may include any transaction within the ordinary scope of the business of the firm, in the course of which one who deals with the firm is induced to act on the faith and belief, well founded, that certain individuals compose the firm, and are bound by contracts made in the firm name within the scope of its ordinary business. Jansen v. Grimshaw, 26 Ill. App. 292.

DEATH BY ACCIDENT.

Death from any unexpected event which happens as by chance, or which does not take place according to the usual course of things. Hutton v. States, etc., Co., 186 Ill. App. 503.

DEATH WITHOUT ISSUE.

Where a will devised a particular estate preceding a gift over, the expression "death without issue" means death before the death of the life tenant, unless the will shows an intention to refer to a later date than the termination of the

life estate. Lachenmyer v. Gehlbach, 266 Ill. 16.

DEATH WITHOUT LIVING HEIRS.

Wills.

A will devising an estate to a son with a limitation over in case of his "death without living heirs," when given the natural meaning of the words, refer to the death of the devisee at any time. Thomas v. Miller, 161 Ill. 70.

DEBENTURE.

(Lat. debentur, they [moneys] are due.). The word with which certain obsolete bonds given by the exchequer began. Blount.

In English Law.

An instrument issued by a company or public body as security for a loan of money. It contains, either expressly or impliedly, a promise to pay the amount mentioned in it, and almost invariably creates a charge on the whole or part of the property of the company or public body. A debenture generally forms part of a series or issue of similar instruments, with a provision that they shall all rank pari passu in proportion to their amounts. As to debentures generally, see Cay. § 267 et seq.

The common form of a bond in England is called a debenture, which is very similar to the ordinary corporate bond in this country. The term is sometimes used in this country, but the kind of bonds called debentures in England, so far as they are a mere floating charge against all the property of the corporation, are rarely if ever issued here. The term is sometimes applied in this country to bonds secured by a pledge of particular assets. 2 Fletcher Cyclopedia Corporations 1918.

DEBENTURE STOCK.

A stock or fund representing money borrowed by a company or public body, in England, and charged on the whole or part of its property. It differs from debentures chiefly in these respects: The title of each original holder appears in a register, instead of being represented by an instrument complete in itself; and the stock is capable of being transferred in any amounts, unless the regulations of the company, etc., forbid the transfer of amounts or fractions less than £10, or the like. Provision is sometimes made for issuing to each holder a certificate representing the amount of his stock, transferable by delivery, so as to entitle the bearer for the time being to the stock in question. Such certificates generally have coupons for interest attached to them, and, while they are outstanding, the stock ceases to be transferable on the register. Perpetual debenture stock is stock which cannot be paid off. The principal statutes relating to debenture stock are the company clauses acts of 1845 and 1863, the commissioners clauses act of 1847, and the local loans act of 1875. Debenture stock issued under these acts is not within the mortmain or charitable uses act. 9 Ch. Div. 337.

DEBERE.

A Latin word, definable as "to owe." Cohen v. Toy Gun, etc., Co., 172 Ill. App. 345.

DEBITUM.

A Latin word, definable as "something owed." Cohen v. Toy Gun, etc., Co., 172 Ill. App. 345.

DEBT.

Term of Large Import.

The word "debt" is a term of large import, including not only debts of record, or judgments, and debts by specialty, but also obligations arising under simple contract, to a very wide extent, and in its popular sense including all that is due under any form of obligation or promise. Cohen v. Toy Gun, etc., Co., 172 Ill. App. 345.

Any sum of money due under contract, express or implied. 20 Cal. 351.

Blackstone restricts the term to money

due on express contract (3 Bl. Comm. 154), but it has been thought that he used the word "express" not so much in contradistinction to implied contracts, as to liabilities arising outside of contract. 2 Mo. App. 94.

The word includes not only debts of record or judgments and debts by specialty, but all that is due to a man under any form of promise. 3 Metc. (Mass.) 526.

In a strict sense, it is confined to sums fixed by agreement, and not dependent on after calculation (1 Yeates [Pa.] 70), but in common use, the absolute fixing of the amount is not necessary (2 Wash. C. C. [U. S.] 386).

"Debt" is a much narrower word than "demand." 2 Hill (N. Y.) 223.

Elements.

The distinguishing and necessary feature of a debt is that a fixed and specific quantity is owing, and that no further valuation is necessary to settle it. Cohen v. Toy Gun, etc., Co., 172 Ill. App. 345.

Advancement with Privilege of Return.

A transaction whereby a father makes an advancement to his sons on condition that they pay him interest thereon during his lifetime, with the privilege of returning the amount advanced is not a debt where the privilege rests in the discretion of the sons and where the father has no power to compel the sons to return the money. Duckett v. Gerig, 223 Ill. 290.

Alimony.

A sum of money ordered by a decree to be paid as alimony is a debt. Paulin v. Paulin, 195 Ill. App. 353.

Claim in Tort.

A claim for damages in an action of tort is not a debt before judgment. Cohen v. Tôy Gun, etc., Co., 172 Ill. App. 34b.

Corporation Act.

The term "debts," used in section 25 of the Corporations Act (J. & A. ¶ 2442), relating to the liability of stockholders, includes a judgment rendered in an ac-

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tion of tort. Cohen v. Toy Gun, etc., Co., 172 Ill. App. 344.

Dividend.

A dividend is not a debt until it is declared and set aside. Cratty v. Peoria, etc., Ass'n, 120 Ill. App. 602.

Imprisonment Clause.

The term "debt," used in section 12 of article 2 of the Constitution of 1870, relating to imprisonment for debt, refers to debts in their proper and popular sense, and is intended to embrace only such debts as arise ex contractu, where the relation of debtor and creditor exists. People v. Zito, 237 Ill. 442; Rich v. People, 66 Ill. 515; Chicago v. Kenney, 35 Ill. App. 66.

Constitution of 1870.

The term "debt," used in section 12 of article 2 of the Constitution of 1870, relating to imprisonment for debt, does not include a liability to pay an amount of money which the reputed father of a bastard child has been ordered by the court to pay for the child's support. Rich v. People, 66 Ill. 515.

The term "debt," used in section 15 of article 13 of the Constitution of 1848, includes any liability to pay money growing out of contract, express or implied. Parker v. Follansbee, 45 Ill. 478.

The penalty for violation of an ordinance is not a "debt," within the meaning of section 12 of article 2 of the Constitution of 1870, relating to imprisonment for debt. Chicago v. Morell, 247 Ill. 386; People v. Zito, 237 Ill. 442; Rich v. People, 66 Ill. 515; Chicago v. Kenney, 35 Ill. App. 66.

Judgment.

A judgment is a debt, whether founded on tort or contract. Cohen v. Toy Gun, etc., Co., 172 Ill. App. 345.

Liability Ascertainable with Certainty.

An action of debt lies for the recovery of any liability when the sum claimed is certain, or is capable of being readily reduced to a certainty. Warren v. McCarthy, 25 III. 87.

Money Decree in Equity.

A decree in equity ordering the payment of a specific sum of money creates a debt. Warren v. McCarthy, 25 Ill. 87; Blattner v. Frost, 44 Ill. App. 581.

Practice Act.

The term "debt," used in section 88 of the Practice Act (J. & A. ¶8625), formerly section 66 of the Practice Act, relating to judgments by confession, is used as indicative of a sum certain that is owing from one person to another, and does not include unliquidated claims. Little v. Dyer, 138 III. 280.

DEBTOR.

A public officer having custody of public funds is a debtor in the sense that he owes an obligation to pay over the money received by him but not in any other sense. Lake County v. Westerfield, 273 Ill. 128.

DEBTORS' ACT 1869.

St. 32 & 33 Vict. c. 62, relating to insolvent debtors. See L. R. Ch. 152; L. R. 10 Ch. 76; 13 Ch. Div. 338; Id. 815.

DECEIT.

Defined.

A fraudulent misrepresentation, by which one man deceives another, to the injury of the latter. Farwell v. Metcalf, 61 Ill. 374.

"Fraud" Compared.

Fraud has been termed a grosser species of deceit. Farwell v. Metcalf, 61 Ill. 374.

Idea of Mistake Excluded.

Deceit excludes the idea of mistake. Farwell v. Metcalf, 61 Ill. 374.

DECLARATION.

Function.

The province of the declaration is to exhibit upon the record the grounds of

the plaintiff's cause of action, as well as for the purpose of notifying the defendant of the precise character of those grounds as regulating his proofs. Ohio & M. Ry. Co. v. People, 149 Ill. 666; Cook v. Scott, 6 Ill. 340. To the same effect see Richman v. South Omaha, etc., Bank, 76 Ill. App. 639.

Account.

The account required by section 18 of the Practice Act of 1874, now section 32 of the Practice Act (J. & A. ¶8569), to be filed with the declaration is not part of the declaration. Quincy, etc., Co. v. Tillson, 67 Ill. 354.

Bill of Particulars.

A bill of particulars filed under rule of court is no part of the declaration. Fish v. Farwell, 160 Ill. 253; George H. Hess Co. v. Dawson, 149 Ill. 145.

Delinquent List As.

The delinquent list in a proceeding for sale for non-payment of a special assessment stands in place of a declaration. People v. Harper, 244 Ill. 122.

Notice or Stipulation.

A notice or stipulation filed with the declaration forms no part of it. Fish v. Farwell, 160 Ill. 253; Humphrey v. Phillips, 57 Ill. 136.

Of Dividend.

A written admission on the part of the corporation of an indebtedness to each particular stockholder. Pease v. Chicago, etc., Co., 170 Ill. App. 236.

DECLARE.

To make exposition; to make an open, explicity avowal; to proclaim. Chase, etc., Co. v. Conners, 182 Ill. App. 421.

DECENNARY.

(Lat. decem, ten). A district originally containing ten men with their families.

King Alfred, for the better preservation of the peace, divided England into counties, the counties into hundreds, and the hundreds into tithings or decennaries, the inhabitants whereof, living together, were sureties or pledges for each other's good behavior. One of the principal men of the latter number presided over the rest, and was called the chief pledge, borsholder, borrow's elder, or tything

DECIMATION.

The punishing every tenth soldier by lot, for mutiny or other failure of duty, was termed "decimatio legionis" by the Romans. Sometimes only the twentieth man was punished (vicesimatio), or the hundredth (centesimatio).

Also tithing or tenth part.

DECIME.

A French coin, of the value of the tenth part of a franc, or nearly two cents.

DECISIVE OATH.

In the civil law. Where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary, which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him. Code, 4. 1. 12.

DECLARATION.

Declarations to become part of the res gestae must be made at the time an act is done which they are supposed to characterize or illustrate, and must be calculated to unfold the nature and quality of the facts which they are intended to explain, and to harmonize with them so obviously as to constitute one transaction. What occurs before or after an act is done does not constitute a part of the res gestae, although the interval of separation may be very brief. MacNeil's Ill. Evidence 501.

DECLARATION OF INTENTION.

The act of an alien who goes before a court of record, and in a formal manner

declares that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whereof at the time he may be a citizen or subject. Act Cong. April 14, 1802, § 1.

DECLARATION OF PARIS.

The name given to an agreement announcing four important rules of international law effected between the principal European powers at the Congress of Paris in 1856. These rules are: (1) Privateering is and remains abolished; (2) the neutral flag covers enemy's goods, except contraband of war; (3) neutral goods, except contraband of war, are not liable to confiscation under a hostile flag; (4) blockades, to be binding, must be effective. Abbott.

DECLARATION OF WAR.

The public proclamation of the government of a state, by which it declares itself to be at war with a foreign power, which is named, and which forbids all and every one to aid or assist the common enemy.

The power of declaring war is vested in congress by the constitution (article 1, § 8). There is no form or ceremony necessary except the passage of the act. A manifesto stating the causes of the war is usually published; but war exists as soon as the act takes effect. It was formerly usual to precede hostilities by a public declaration communicated to the enemy, and to send a herald to lemand satisfaction. Potter, Grec. Ant. bk. 3, c. 7; Dig. 49. 15. 24. But that is not the practice of modern times.

A state of war, known as "imperfect" or "unsolemn" war, may exist without a declaration. Grotius de Jure Belli, bk. 1, c. 3, § 4. See 25 Wend. (N. Y.) 577.

DECLARATORY.

Something which explains or ascertains what before was uncertain or doubtful; as, a declaratory statute, which is one

passed to put an end to a doubt as to what the law is, and which declares what it is, and what it has been. 1 Bl. Comm. 86.

DECLARATORY ACTION.

In Scotch law. An action in which the right of the pursuer (or plaintiff) is craved to be declared, but nothing claimed to be done by the defender (defendant). Bell. Dict.; Ersk. Inst. 5. 1. 46. Otherwise called an "action of declarator."

DECLINATORY PLEA.

In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 Hale, P. C. 236; 4 Bl. Comm. 333. Now abolished. 4 Steph. Comm. 400, note; Id. 436, note.

DECOCTION.

The operation of boiling certain ingredients in a fluid for the purpose of extracting the parts soluble at that temperature. The product of this operation.

In a case in which the indictment charged the prisoner with having administered to a woman a decoction of a certain shrub, called "savin," it appeared that the prisoner had administered an infusion, and not a decoction. The prisoner's counsel insisted that he was entitled to an acquittal on the ground that the medicine was misdescribed; but it was held that infusion and decoction are ejusdem generis, and that the variance was immaterial. 3 Campb. 74, 75.

DECREE.

The sentence or order of a court of chancery determining the rights of the parties to a suit pending, according to equity and good conscience. People v. Spring Lake Dist., 253 Ill. 491.

The conclusion of the court upon the allegations in the bill, and the proofs offered in support thereof. Williams v. Waldo, 4 Ill. 268.

DECREMENTUM MARIS.

(Lat.) In old English law. Decrease of the sea; the receding of the sea from the land. Callis, Sew. (53), 65.

DECRETAL ORDER.

In chancery practice. An order made by the court of chancery, upon a motion or petition, in the nature of a decree. 2 Daniell, Ch. Prac. 637.

DECRETALES BONIFACII OCTAVI.

A supplemental collection of the canon law, published by Boniface VIII. in 1298. Called also, liber sextus decretalium, sixth book of the decretals. 1 Kaufm. Maskeld. Civ. Law, 83, note.

DECRETALES GREGORII NONI.

The decretals of Gregory the Ninth. A collection of the laws of the church, published by order of Gregory IX. in 1227. It is composed of five books, subdivided into titles, and each title is divided into chapters. They are cited by using an X (or extra) thus: Cap. & X de Regulis Juris, etc. 1 Kaufm. Mackeld. Civ. Law, 83, note; Butler, Hor. Jur. 115.

DECRETALS.

In ecclesiastical law. Canonical epistles, written by the pope alone, or by the pope and cardinals, at the instance or suit of one or more persons, for the ordering and determining some matter in controversy, and which have the authority of a law in themselves.

The decretals were published in three volumes. The first volume was collected by Raymundus Barcinius, chaplain to Gregory IX., about the year 1227, and published by him to be read in schools, and used in the ecclesiastical courts. The second volume is the work of Boniface VIII., compiled about the year 1298, with additions to and alterations of the ordinances of his predecessors. The third volume is called the "Clementines," be-

cause made by Clement V., and was published by him in the council of Vienna, about the year 1308. To these may be added the Extravagantes of John XXII. and other bishops of Rome, which, relatively to the others, are called Novellae Constitutiones. Ridley's View, etc., 99, 100; 1 Fournel, Hist. des Avocats, 194, 195.

The false decretals were forged in the names of the early bishops of Rome, and first appeared about A. D. 845-850. The author of them is not known. They are mentioned in a letter written in the name of the council of Quierzy, by Charles the Bald, to the bishops and lords of France. See Van Espen Fleury, Droit de Canon, by Andre.

The decretals constitute the second division of the Corpus Juris Canonici.

DECRETUM GRATIANI.

A collection of ecclesiastical law made by Gratian, a Bolognese monk, in the year 1151. It is the oldest of the collections constituting the Corpus Juris Canonici. 1 Kaufm. Mackeld. Civ. Law, 81; 1 Bl. Comm. 82; Butler, Hor. Jur. 113.

DEDI.

Defined.

(Lat. I have given.) A word used in deeds and other instruments of conveyance when such instruments were made in Latin.

The use of this word formerly carried with it a warranty in law, when in a deed; for example, if in a deed it was said, "dedi (I have given), etc., to A. B.," there was a warranty to him and his heirs. Brooke, Abr. "Guaranty," pl. 85. The warranty thus wrought was a special warranty, extending to the heirs of the feoffee during the life of the donor only. Co. Litt. 384b; 4 Coke, 81; 5 Coke, 17. Dedi is said to be the aptest word to denote a feoffment. 2 Sharswood. Bi. Comm. 310. The future, dabo, is found in some of the Saxon grants. 1 Spence, Eq. Jur. 44.

The word of feofiment at common law. Dorsey v. St. Louis, A. & T. H. R. Co., 58 Ill. 68. To the same effect see Webster v. Conley, 46 Ill. 17.

Implies Warranty.

Where at common law a deed accompanied a gift of land, the word "dedi" implied a warranty. Dorsey v. St. L., A. & T. H. R. Co., 58 Ill. 68.

The word "dedi," in a feoffment at common law, implied a warranty during the life of the grantor. Webster v. Conley, 46 Ill. 17.

DEDICATION.

Defined.

The act of giving or devoting property to some public use. Rees v. Chicago, 38 Ill. 335.

The act of devoting or giving property for some proper object, and in such manner as to conclude the owner. Davidson v. Reed, 111 Ill. 169.

Common Law and Statutory Dedication Compared.

The difference between a statutory and a common law dedication is, that the one vests the legal title to the ground in the municipal corporation, in trust for the public, while the other leaves the title in the original owner, charged with the same rights and interests in the public as it would have if the fee was in the municipal corporation. Russell v. Lincoln, 200 Ill. 515; Maywood Co. v. Maywood, 118 Ill. 69; Chicago, R. I. & P. R. Co. v. Joliet, 79 Ill. 32.

Elements at Common Law.

To constitute a dedication at common law, either an intention to dedicate, or such acts or declarations as will equitably estop the owner from denying such intention must be proved. Alden, etc., Co. v. Challis, 200 Ill. 229; Chicago v. Chicago, R. I. & P. R. Co., 152 Ill. 571; Moffett v. Chicago, 138 Ill. 623; Chicago v. Hill, 124 Ill. 653; Chicago v. Stinson, 124 Ill. 513; Chicago v. Johnson, 98 Ill. 624; McIntyre v. Storey, 80 Ill. 130; Kelly v. Chicago, 48 Ill. 390. To the same effect see Smith v. Flora, 64 Ill. 95.

A common law dedication of lands, to

be effectual, must be made to the public. Lake E. & W. R. Co. v. Whitham, 155 Ill. 529; Chicago v. Chicago, R. I. & P. Ry. Co., 152 Ill. 571; Fisk v. Havana, 88 Ill. 210; Illinois, etc., Co. v. Littlefield, 67 Ill. 372.

To constitute a dedication at common law it is essential (1) that there be an intention to dedicate the land to public use; (2) that there be an acceptance thereof by the public; (3) that the proof of both facts be clear, satisfactory and unequivocal. Stacy v. Glen, etc., Co., 223 Ill. 548; Birge v. Centralia, 218 Ill. 507; Bethel v. Pruett, 215 Ill. 167; Chicago v. Borden, 190 Ill. 443; Woodburn v. Sterling, 184 Ill. 210; Wheatfield v. Grundemann, 164 Ill. 252; Chicago v. Chicago, R. I. & P. Ry. Co., 152 Ill. 571; Trustees v. Walsh, 57 Ill. 371; Grube v. Nichols, 36 Ill. 98; Klein v. Reinhardt, 163 Ill. App. 261; Dickerman v. Marion, 122 Ill. App. 158.

Intention Vital Element.

The intention to dedicate is the vital, controlling element in a dedication. Woodburn v. Sterling, 184 Ill. 210; Chicago v. C., R. I. & P. Ry. Co., 152 Ill. 571; Fisk v. Havana, 88 Ill. 210; Harding v. Hale, 61 Ill. 200; Grube v. Nichols, 36 Ill. 98. To the same effect see Illinois, etc., Co. v. Littlefield, 67 Ill. 374.

Not Passive Act.

A dedication is not an act of omission to assert a right, but the affirmative act of the mind of the donor, arising from the active, and not passive condition of his mind. Palmer v. Chicago, 248 Ill. 210; Stacy v. Glen, etc., Co., 223 Ill. 549; Chicago v. Borden, 190 Ill. 443; Chicago v. Chicago, R. I. & P. Ry. Co., 152 Ill. 571; Chicago v. Hill, 124 Ill. 653; Grube v. Nichols, 36 Ill. 97.

Implied by Law.

When the owner of land subdivides and sells lots with reference to a plat showing streets and alleys, dedication is implied by law. Mann v. Bergmann, 203 Ill. 409; Russell v. Lincoln, 200 Ill. 517; Augusta v. Tyner, 197 Ill. 245; Eisendrath v. Chicago, 192 Ill. 327; Rusk v.

Berlin, 173 Ill. 634; Earll v. Chicago, 136 Ill. 277; Lake View v. LeBahn, 120 Ill. 101; Lee v. Mound Station, 118 Ill. 313; Zearing v. Raber, 74 Ill. 411; Waugh v. Leech, 28 Ill. 491; Godfrey v. Alton, 12 Ill. 35.

May Be Inferred Prima Facie from User.

A dedication may be inferred from long continued user by the public and acquiescence by the owner in such user, but such evidence is not conclusive, and any evidence tending to rebut the inference of intention to dedicate is competent. Chicago v. Chicago, R. I. & P. Ry. Co., 152 Ill. 572; Chicago v. Hill, 124 Ill. 652; Chicago v. Stinson, 124 Ill. 513; Maywood Co. v. Maywood, 118 Ill. 70; Wragg v. Penn, 94 Ill. 25; Kyle v. Logan, 87 Ill. 67; McIntyre v. Storey, 80 Ill. 130; Hiner v. Jeanpert, 65 Ill. 430; Kelly v. Chicago, 48 Ill. 390; Smith v. Flora, 64 Ill. 95; Marcy v. Taylor, 19 Ill. 636; Dimon v. People, 17 Ill. 420; Alvord v. Ashley, 17 Ill. 368; Warren v. Jacksonville, 15 Ill. 241; Godfrey v. Alton, 12 Ill. 36.

Acceptance.

The acceptance by the public of a dedication, which, at common law, is essential to the validity of the dedication, may be either by express act of some lawfully constituted authority, or may be inferred from acts, such as user, or the repair or control of the alleged highway by the public authorities. People v. Johnson, 237 Ill. 241; Russell v. Lincoln, 200 Ill. 517; Alden, etc., Co. v. Challis, 200 Ill. 229; Woodburn v. Sterling, 184 Ill. 216; Carlinville v. Castle, 177 Ill. 107; Fairbury, etc., Board v. Holly, 169 Ill. 15; Chicago v. Chicago, R. I. & P. Ry. Co., 152 Ill. 572; Chicago v. Drexel, 141 Ill. 105; Hamilton v. Chicago, B. & Q. R. Co., 124 Ill. 242; Lake View v. LeBahn, 120 Ill. 102: Davidson v. Reed, 111 Ill. 169; Littler v. Lincoln, 106 Ill. 368; Wragg v. Penn, 94 Ill. 25; Fisk v. Havana, 88 Ill. 209; Rutland v. Dayton, 60 Ill. 65; Rees v. Chicago, 38 Ill. 336; Grube v. Nichols, 36 Ill. 96; Gentleman v. Soule, 32 Ill. 279; Marcy v. Taylor, 19 Ill. 637; Alvord v. Ashley, 17 Ill. 369; Klein v. Reinhardt,

163 Ill. App. 261; Miller v. Commissioners, 125 Ill. App. 435.

When a dedication is beneficial or greatly convenient or necessary to the public, an acceptance will be implied from slight circumstances. Alden, etc., Co. v. Challis, 200 Ill. 229.

When a deed or plat imposes a burden on the public by the dedication, as, to keep streets in repair, an acceptance cannot be inferred from the mere fact that the deed or plat is recorded. Littler v. Lincoln, 106 Ill. 369; Chicago v. Gosselin, 4 Ill. App. 574.

Mere Offer Till Acceptance.

Until a dedication is validly accepted by the public, it remains a mere offer to dedicate, which may be revoked at any time by the owner. Russell v. Lincoln, 200 Ill. 517; Chicago v. Drexel, 141 Ill. 109; Lee v. Mound Station, 118 Ill. 313; Winnetka v. Prouty, 107 Ill. 223; Littler v. Lincoln, 106 Ill. 369; Forbes v. Balenseifer, 74 Ill. 187.

Certain Description Necessary.

To make a good dedication, either under the statute or at the common law, requires a definite and certain description of that which is proposed to be dedicated, and an acceptance by the public before the withdrawal or abandonment of the offer to dedicate. Winnetka v. Prouty, 107 Ill. 223.

No Particular Form Required.

To constitute a dedication at common law, no particular form is required, and it may be made either in writing or by parol, by any form of acts or declarations showing an intention on the part of the owner to dedicate land to public use. Guttery v. Glenn, 201 Ill. 286; Russell v. Lincoln, 200 Ill. 516; Alden, etc., Co. v. Challis, 200 III. 228; Woodburn v. Sterling, 184 Ill. 210; Clark v. McCormick, 174 Ill. 170; Moffett v. South Park Commissioners, 138 Ill. 623; Maywood Co. v. Maywood, 118 Ill. 69; Davidson v. Reed, 111 Ill. 169; Smith v. Flora, 64 Ill. 95; Field v. Carr, 59 Ill. 200; Rees v. Chicago, 38 Ill. 338; Waugh v. Leech, 28 Ill. 491; Warren v. Jacksonville, 15 Ill. 240; Godfrey v. Alton, 12 Ill. 35; Miller v. Commissioners, 125 Ill. App. 434.

Statute of Frauds Inapplicable.

A dedication is not within the Statute of Frauds. Alden, etc., Co. v. Challis, 200 Ill. 228; Davidson v. Reed, 111 Ill. 169; Rees v. Chicago, 38 Ill. 338; Alvord v. Ashley, 17 Ill. 369; Warren v. Jacksonville, 15 Ill. 240; Godfrey v. Alton, 12 Ill. 35; Miller v. Commissioners, 125 Ill. App. 434.

As Conveyance.

A dedication of property for public use is in the nature of a conveyance for the purposes of the use, so that if he has no title or his title is conditional, and it fails, the dedication fails. Alton v. Fishback, 181 Ill. 399; Elson v. Comstock, 150 Ill. 308; Gridley v. Hopkins, 84 Ill. 530.

DEDIMUS POTESTATEM.

(Lat. we have given power.) The name of a writ to commission private persons to do some act in the place of a judge; as, to administer an oath of office to a justice of the peace, to examine witnesses, and the like. Cowell; Comyn, Dig. "Chancery" (K. 3), (P. 2), "Fine" (E 7); Dane, Abr. Index; 2 Sharswood, Bl. Comm. 351.

DEDIMUS POTESTATEM DE AT-TORNO FACIENDO.

(Lat.) The name of a writ which was formerly issued by authority of the crown in England to authorize an attorney to appear for a defendant.

By St. Westminster II. (13 Edw. I. c. 10), all persons impleaded may make an attorney to sue for them, in all pleas moved by or against them, in the superior courts there enumerated. 3 Man. & G. 184. note.

DEDUCTION FOR NEW.

In maritime law. The allowance (usually one-third) on the cost of re- | as conveyances at common law,--of

pairing a damage to the ship by the extraordinary operation of the perils of navigation, the renovated part being presumed to be better than before the damage. In some ports, by custom or by express provision in the policy, the allowance is not made on a new vessel during the first year, or on new sheathing, or on an anchor or chain cables. 1 Phil. Ins. § 50; 2 Phil. Ins. §§ 1369, 1431, 1433; Benecke & S. Av. (Phil. Ed.) 167, note 238; 2 Serg. & R. (Pa.) 229; 1 Caines (N. Y.) 573; 18 La. 77; 2 Cranch, C. C. (U. S.) 218; 21 Pick. (Mass.) 456; 5 Cow. (N. Y.) 63.

DEED.

Defined.

A contract, a parting with property by the grantor, and an acceptance thereof by the grantee. Chicago v. Shepard, 8 Ill. App. 611.

A written instrument under seal. Jackson v. Security, etc., Co., 233 Ill. 166; Barrett v. Hinckley, 124 Ill. 39. To the same effect see Barger v. Hobbs, 67 Ill. 597; Steele v. Wynn, 139 Ill. App.

A written instrument under seal, containing a contract or agreement which has been delivered by the party to be bound and accepted by the obligee or covenantee. Co. Litt. 171; 2 Bl. Comm. 295; Shep. Touch. 50.

A writing under seal, by which lands, tenements, or hereditaments are conveyed for an estate not less than a freehold. 2 Sharswood, Bl. Comm. 294.

Any instrument in writing under seal, whether it relates to the conveyance of real estate, or to any other matter,-as, for instance, a bond, single bill, agreement, or contract of any kind-is as much a deed as is a conveyance of real estate, and, after delivery and acceptance, is obligatory. 2 Serg. & R. (Pa.) 504; 5 Dana (Ky.) 365; 2 Miss. 154. The term is, however, often used in the latter sense above given, and perhaps oftener than in its more general signification.

According to Sir William Blackstone (2 Comm. 313), deeds may be considered which the original are feoffment, gift, grant, lease, exchange, partition; the derivative are release, confirmation, surrender, assignment, defeasance,—or conveyances which derive their force by virtue of the statute of uses, namely, covenant to stand seised to uses; bargain and sale of lands; lease and release; deed to lead and declare uses; deed of revocation of uses.

Grantee.

A grantee is one of the necessary constituents of a deed. Hulick v. Scovil, 9 Ill. 191.

Delivery.

A delivery is an essential part of a deed. Riegel v. Riegel, 243 Ill. 630; Noble v. Tipton, 219 Ill. 186; Lanphier v. Desmond, 187 Ill. 378; Weber v. Christen, 121 Ill. 96; Skinner v. Baker, 79 Ill. 499; Wiggins v. Lusk, 12 Ill. 135.

DEED POLL.

A deed which is made by one party only.

A deed in which only the party making it executes it, or binds himself by it as a deed. 2 Washb. Real Prop. 588.

The distinction between "deed poll" and "indenture" has come to be of but little importance. The ordinary purpose of a deed poll is merely to transfer the rights of the grantor to the grantee. It was formerly called charta de una parte, and usually began with these words: Sciant praesentes et futuri quod ego, A., etc.; and now begins, "Know all men by these presents that I, A. B., have given, granted, and enfeoffed, and by these presents do give, grant, and enfeoff," etc. Cruise, Dig. tit. 32, c. 1, § 23.

DEEMED AND CONSIDERED.

The expression "deemed and considered," used in section 13 of the Criminal Code of 1845, is equivalent to "are hereby declared to be." Baxter v. People, 8 III. 382.

DEFEASANCE.

(Fr. defaire, to defeat.) An instrument which defeats the force or operation of some other deed or estate. That which is in the same deed is called a condition, and that which is in another deed is a defeasance. Comyn, Dig. "Defeasance."

A collateral deed made at the same time with a feoffment or grant, containing certain conditions, upon the performance of which the estate created by such feoffment or grant may be defeated. 43 Me. 371.

An instrument collateral to a bond, and containing the condition thereof. 2 Bl. Comm. 342.

DEFECT.

The want of something required by law. See 20 N. Y. 355; 40 Barb. (N. Y.) 574.

DEFECTIVE PLEADING.

Within the meaning of the rule that a judgment on demurrer does not operate to bar a subsequent suit where the judgment not on the merits, and by reason of a "defective pleading," the quoted expression does not mean, as applied to a suit in equity, a statement of a defective title, or of facts which do not entitle complainant to the relief prayed for, as where a bill alleges an equitable title in real estate, and states the facts on which the claim is based, to which a demurrer is sustained and the bill dismissed. Marie Church v. Trinity Church, 253 Ill. 25.

DEFECTIVE TITLE.

A defective title as applied to an office, is understood to be, and is, in contemplation of law, the same as no title whatever, and a party exercising an office or franchise of a public nature under such a title is considered as a mere usurper. Place v. People, 192 Ill. 165; Gunterman v. People, 138 Ill. 523; People v. Ridgley, 21 Ill. 67.

DEFENDANT.

In an action against several defendants, a verdict against the "defendant," without naming a particular defendant, is not erroneous as a verdict against all, the word "defendant" being used as a collective noun, including all parties defendant. West Chicago S. R. Co. v. Horne, 197 Ill. 252; Bacon v. Schepflin, 185 Ill. 132.

DEFENDANT'S SERVANTS.

In an action by a servant against a master for personal injuries a declaration alleging merely that plaintiff was injured by the negligence of "defendant's servants" is insufficient, since the quoted expression includes any and all of defendant's servants, including such as are fellow servants with plaintiff. Joliet, etc., Co. v. Shields, 134 Ill. 214.

DEFENDER OF THE FAITH.

A peculiar title belonging to the sovereign of England, as that of "Catholic" to the king of Spain, and that of "Most Christian" to the king of France. These titles were originally given by the popes of Rome; and that of Defensor Fidel was first conferred by Pope Leo. X. on King Henry VIII., as a reward for writing against Martin Luther; and the bull for it bears date quinto Idus Octob., 1521. Enc. Lond.

DEFENSE.

The word "defense," used in section 16 of the act of 1827, now section 18 of the Justices and Constables Act (J. & A. ¶ 6914), relating to the consolidation of claims in actions before justices, includes a case where a defendant sued for a claim within the jurisdiction of the justice pleads in set off a note of an amount exceeding such jurisdiction, but which when plaintiff's claim is deducted, leaves a balance due defendant of an amount within the jurisdiction of the justice, for which the justice may render judgment for defendant. Nichols v. Ruckells, 4 Ill. 301.

DEFICIENCY DECREES.

One for the balance of the mortgage debt remaining after applying toward it the proceeds of the sale. Cotes v. Bennett, 84 Ill. App. 36.

A deficiency decree does not have the force and effect of a judgment at law, so as to become a lien, until the deficiency is ascertained from the sale. Cotes v. Bennett, 84 Ill. App. 37.

DEFINE.

If the title of an act should read "to define and punish" certain offenses, the word "define" would suggest that a new crime was to be created and defined, or that a definition of some offense already existing was to be inserted. Milne v. People, 224 Ill. 129.

DEFINITE FAILURE OF ISSUE.

A failure of issue living at the time of the death of the devisee. Metzen v. Schopp, 202 Ill. 286; Strain v. Sweeny, 163 Ill. 606.

A definite failure of issue is when a precise time is fixed by the will for the failure of issue. O'Hare v. Johnston, 273 Ill. 475; Smith v. Kimbell, 153 Ill. 373.

DEFORCEMENT.

The holding any lands or tenements to which another has a right.

In its most extensive sense, the term includes any withholding of any lands or tenements to which another person has a right (Co. Litt. 277); so that this includes as well an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, by which the owner of the freehold is kept out of possession. But, as contradistinguished from the former, it is only such a detainer of the freehold from him who has the right of property as falls within none of the injuries above mentioned. 3 Bl. Comm. 173; Archb. Civ. Pl. 13; Dane, Arb. Index.

In Scotch Law.

The opposition given, or resistance made, to messengers or other officers while they are employed in executing the law.

This crime is punished by confiscation of movables, the one half to the king and the other to the creditor at whose suit the diligence is used. Ersk. Prac. 4. 4. 32.

DEFORCIARE.

To withhold lands or tenements from the rightful owner. This is a word of art which cannot be supplied by any other word. Co. Litt. 331b; 3 Thomas, Co. Litt. 3; Bracton, lib. 4, 238; Fleta, lib. 5, c. 11.

DEFRAUD.

Implies Advantage to Party Defrauding.

The word "defraud" necessarily implies that advantage comes to the party defrauding, and corresponding damage to the party who is defrauded. People v. Holtzman, 272 Ill. 450.

Criminal Code.

The term "defrauds" as used in section 97 of division 1 of the Criminal Code (J. & A. ¶ 3654), relating to obtaining credit by false pretenses, means to deprive one of a property right by deception. People v. Holtzman, 272 Ill. 450.

It cannot be said that one "defrauds" a bank, within the meaning of section 97 of division 1 of the Criminal Code (J. & A. ¶ 3654), relating to obtaining credit by false pretenses by merely failing to include in the statement by which such credit was obtained certain items of liabilities, where there was no evidence that defendant's statement of his assets was false, and where the sum total of defendant's liabilities is so much less than the amount of his assets as to show that he has plenty of property to pay all he owes, including the amount owed to the bank. People v. Holtzman, 272 Ill. 450.

DEI GRATIA.

(Lat. by the grace of God.) An expression used in the titles of sovereigns, and considered as one of the prerogatives of royalty, propria jura majestatis, although anciently a part of the titles of inferior officers and magistrates, ecclesiastical and civil. Spelman.

DEI JUDICIUM.

(Lat. the judgment of God.) A name given to the trial by ordeal.

DELECTUS PERSONAE (OR PERSONARUM).

(Lat. the choice of the person.) A term applied to the doctrine that no new member can be introduced into a firm without the unanimous consent of the then partners. Shumaker, Partn. 9.

This doctrine excludes even executors and representatives of partners from succeeding to the state and condition of partners. 7 Pick. (Mass.) 237; 3 Kent, Comm. 55.

— In Scotch Law

The personal preference which is supposed to have been exercised by a landlord in selecting his tenant, by the members of a firm in making choice of partners, in the appointment of persons to office, and other cases. Nearly equivalent to personal trust, as a doctrine in law. Bell, Dict.

DELEGATA POTESTAS NON POTEST DELEGARI.

A delegated authority cannot be again delegated. Coke, 2d Inst. 597; 5 Bing. N. C. 310; 2 Bouv. Inst. note 1300; Story, Ag. § 13; 11 How. (U. S.) 233.

A maxim which is not of universal restriction. Warder v. White, 14 Ill. App. 53.

DELIBERATION.

An act performed with deliberation is the opposite of an act performed under uncontrollable passion which prevents all deliberation or cool reflection in forming a purpose. Davison v. People, 90 Ill. 229.

The act of the understanding by which a party examines whether a thing proposed ought to be done or not to be done. or whether it ought to be done in one manner or another. The deliberation relates to the end proposed, to the means of accomplishing that end, or to both. It is a presumption of law that all acts committed are done with due deliberation,-that the party intended to do what he has done. But he may show the contrary. In contracts, for example, he may show that he has been taken by surprise (q. v.); and when a criminal act is charged, he may prove that it was an accident, and not with deliberation,that, in fact, there was no intention or will. In relation to crime, it implies a weighing of the motives for the act and its consequences, with a view to decision thereon. 28 Iowa, 524.

"Deliberation" is not synonymous with "premeditation." "Deliberation is prolonged premeditation." 74 Mo. 247.

It does not mean brooded over, reflected upon for a week, a day, or an hour, but it means an intent executed, not under the influence of violent passion, but in the furtherance of a formed design. 66 Mo. 13.

DELICT.

In civil law. The act by which one person, by fraud or malignity, causes some damage or tort to some other.

In its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally, without evil intention. But more commonly by "delicts" are understood those small offenses which are punished by a small fine or a short imprisonment.

Private delicts are those which are directly injurious to a private individual.

Public delicts are those which affect the whole community in their hurtful consequences.

Quasi delicts are the acts of a person

who, without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Obl. note 116; Ersk. Prac. 4. 4. 1.

DELICTUM.

(Lat.) A crime or offense; a tort or wrong, as in actions ex delicto. 1 Chit. Pl. A challenge of a juror propter delictum is for some crime or misdemeanor that affects his credit, and renders him infamous. 3 Bl. Comm. 363; 2 Kent, Comm. 241. Some offense committed, or wrong done. 1 Kent, Comm. 552; Cowp. 199. 200. A state of culpability. Occurring often, in the phrase "in pari delicto melior est conditio defendentis." So, where both parties to a broken contract have been guilty of unlawful acts, the law will not interfere, but will leave them in pari delicto. 2 Greenl. Ev. § 111.

DELINQUENT.

Taxes which are delinquent are those which remain unpaid after demand and notice by an officer who has authority to collect them. People v. Jacksonville & St. L. Ry. Co., 265 Ill. 558; People v. Chicago & I. M. Ry. Co., 260 Ill. 626; People v. Chicago & E. I. R. Co., 214 Ill. 198.

DELIRIUM FEBRILE.

In medical jurisprudence. A form of mental aberration incident to febrile diseases, and sometimes to the last stages of chronic diseases.

DELIRIUM TREMENS.

(Called, also, mania-a-potu.) In medical jurisprudence. A form of mental disorder incident to habits of intemperate drinking, which generally appears as a sequel to a few days' abstinence from stimulating drink.

DELIVERED.

The term "delivered," used in section 74 of division 1 of the Criminal Code

(J. & A. ¶ 3614), defining embezzlement, implies actual knowledge in some one who can be a witness. Ker v. People, 110 Ill. 646.

Money collected by a constable in his official capacity, on executions coming into his hands as an officer, is not "delivered" to him, within the meaning of section 74 of division 1 of the Criminal Code (J. & A. ¶ 3614), defining embezzlement, although paid to such constable without a levy. Stoker v. People, 114 Ill. 324.

DELIVERED ABOARD THE CARS.

A contract to construct a hoisting engine "delivered aboard the cars" at a named place merely means that the makers, in addition to completing the engine, would also deliver it on board the cars without charge other than the contract price, and does not indicate the time when title was to pass. Dobschuetz v. Holliday, 82 Ill. 374.

DELIVERY.

Defined.

Transmitting the possession of a thing from one person into the power or possession of another. Lauder v. Peoria, etc., Society, 71 Ill. App. 479.

Imports Change of Possession or Title.

The word "delivery" is sometimes used meaning the change of possession, but frequently as meaning the change of title. McCormick v. Unity Co., 239 Ill. 312.

Dramshops Act.

The word "delivery," used in section 13 of the act of 1903 (J. & A. ¶ 4649), relating to shifts of devices by which liquor is sold in violation of law, is used in its ordinary sense, and as pertaining to the expression "sell, barter or exchange," used in section 12 of the same act (J. & A. ¶ 4648), and means a delivery in dry territory by the person disposing of the liquor (by sale, barter or exchange), to the person acquiring the same, or other delivery of the like legal effect in dry territory. People v. Young, 237 Ill. 203.

Deed.

A manual transfer of a deed to the grantee with the intention of passing the title from himself to the grantee, and of relinquishing all power and control over the instrument itself. Rodemeier v. Brown, 169 Ill. 352.

The final act on the part of the grantor by which he consummates the purpose of his conveyance. Dagley v. Black, 197 Ill. 56; Walls v. Ritter, 180 Ill. 619; Provart v. Harris, 150 Ill. 47.

The act of the grantor, indicated by either acts or words, or both, which shows an intention on his part to perfect the transaction by a surrender of the instrument to the grantee or to some third person for his use and benefit. Vaughn v. Vaughn, 272 Ill. 23; Prince v. Prince, 258 Ill. 311.

- Intention.

The very essence of the delivery of a deed is the intention of the party. Vaughn v. Vaughh, 272 Ill. 23; Latshaw v. Latshaw, 266 Ill. 48; Prince v. Prince, 258 Ill. 311; Hoyt v. Northup, 256 Ill. 608: Stevens v. Stevens, 256 Ill. 146; Weigand v. Rutschke, 253 Ill. 264; Riegel v. Riegel, 243 Ill. 630; Benner v. Bailey, 234 Ill. 82; Oswald v. Caldwell, 225 Ill. 233; Elliott v. Murray, 225 Ill. 113; Russell v. Mitchell, 223 Ill. 445; Baker v. Hall. 214 Ill. 370; Munro v. Bowles, 187 Ill. 348; Hollenbeck v. Hollenbeck, 185 Ill. 103; Weaver v. Weaver, 182 Ill. 292; Walls v. Ritter, 180 Ill. 619; Gross v. Arnold, 177 Ill. 578; Hawes v. Hawes, 177 Ill. 414; Walter v. Way, 170 Ill. 99; Rodemeier v. Brown, 169 Ill. 352; Brown v. Brown, 167 Ill. 637; Shults v. Shults, 159 Ill. 661; Wilson v. Wilson, 158 Ill. 574; Miller v. Meers, 155 Ill. 293; Rountree v. Smith, 152 Ill. 503; Provart v. Harris, 150 Ill. 47; Oliver v. Oliver, 149 Ill. 548; Douglas v. West, 140 Ill. 463; Bovee v. Hinde, 135 Ill. 147; Price v. Hudson, 125 Ill. 286; Weber v. Christen, 121 Ill. 97; Roane v. Baker, 120 Ill. 312; Cline v. Jones, 111 Ill. 567; Benneson v. Aiken, 102 Ill. 287; Byars v. Spencer, 101 Ill. 433; Gunnell v. Cockerill, 84 Ill. 321; Gunnell v. Cockerill, 79 Ill. 81; Rivard v. Walker, 39 Ill. 414;

Masterson v. Cheek, 23 Ill. 74; Bryan v. Wash., 7 Ill. 566; Jummel v. Mann, 80 Ill. App. 295.

To constitute a valid delivery of a deed the acts or declarations relied on must be with the intention to pass the title thereby from the grantor to the grantee. Vaughn v. Vaughn, 272 Ill. 23; Prince v. Prince, 258 Ill. 312; Weigand v. Rutschke, 253 Ill. 263; Stevens v. Stevens, 256 Ill. 146; Riegel v. Riegel, 243 Ill. 630; Oswald v. Caldwell, 225 Ill. 233; Elliott v. Murray, 225 Ill. 112; Russell v. Mitchell, 223 Ill. 445; Baker v. Hall, 214 Ill. 370; Dagley v. Black, 197 Ill. 57; Munro v. Bowles, 187 Ill. 348; Weaver v. Weaver, 182 Ill. 292; Walls v. Ritter, 180 Ill. 619; Gross v. Arnold, 177 Ill. 578; Hawes v. Hawes, 177 Ill. 414; Rodemeier v. Brown, 169 Ill. 352; Brown v. Brown, 167 Ill. 637; Shults v. Shults, 159 Ill. 660; Wilson v. Wilson, 158 Ill. 574; Miller v. Meers, 155 Ill. 293; Rountree v. Smith, 152 Ill. 503; Provart v. Harris, 150 Ill. 48; Oliver v. Oliver, 149 Ill. 548; Douglas v. West, 140 Ill. 463; Bovee v. Hinde, 135 Ill. 147; McElroy v. Hiner, 133 Ill. 167; Price v. Hudson, 125 III. 286; Roane v. Baker, 120 III. 312; Cline v. Jones, 111 Ill. 567; Benneson v. Aiken, 102 Ill. 287; Byars v. Spencer, 101 Ill. 433; Gunnell v. Cockerill, 84 Ill. 321; Gunnell v. Cockerill, 79 Ill. 81; Rivard v. Walker, 39 Ill. 414; Masterson v. Cheek, 23 Ill. 74; Bryan v. Wash., 7 Ill. 566; Jummel v. Mann, 80 Ill. App. Brooks v. People, 15 Ill. App. 578.

- Parting with Control.

To constitute an effective delivery of a deed, the grantor must, by the act relied on as a delivery, part with all dominion, power and control over the deed, retaining no right to reclaim or recall it. Latshaw v. Latshaw, 266 Ill. 48; Prince v. Prince, 258 Ill. 312; Stevens v. Stevens, 256 Ill. 144; Weigand v. Rutschke, 253 Ill. 263; Riegel v. Riegel, 243 Ill. 630; Benner v. Bailey, 234 Ill. 81; Elliott v. Murray, 225 Ill. 114; Russell v. Mitchell, 223 Ill. 444; Noble v. Tipton, 219 Ill. 186; Baker v. Hall, 214 Ill. 370; Spacy v. Ritter, 214 Ill. 268; Dagley v. Black, 197 Ill. 57; Munro v. Bowles, 187 Ill. 348;

Weaver v. Weaver, 182 Ill. 292; Walls v. Ritter, 180 Ill. 619; Hawes v. Hawes, 177 Ill. 414; Walter v. Way, 170 Ill. 99; Rodemeier v. Brown, 169 Ill. 352; Brown v. Brown, 167 Ill. 637; Shults v. Shults, 159 Ill. 660; Wilson v. Wilson, 158 Ill. 574; Provart v. Harris, 150 Ill. 47; Oliver v. Oliver, 149 Ill. 548; Douglas v. West, 140 Ill. 463; McElroy v. Hiner, 133 Ill. 167; Bovee v. Hinde, 135 Ill. 148; Weber v. Christen, 121 Ill. 96; Roane v. Baker, 120 Ill. 313; Cline v. Jones, 111 Ill. 567; Benneson v. Aiken, 102 Ill. 287; Byars v. Spencer, 101 Ill. 433; Stinson v. Anderson, 96 Ill. 376; Gunnell v. Cockerill, 84 Ill. 321; Gunnell v. Cockerill, 79 Ill. 81; Rivard v. Walker, 39 Ill. 414; Masterson v. Cheek, 23 Ill. 74; Bryan v. Wash., 7 Ill. 566; Brooks v. People, 15 Ill. App. 578.

- Recording Deed.

If a grantor, with or without any previous arrangement with the grantee, sign, seal and acknowledge a deed, place it in the hands of the register to be recorded, notify the grantee of the act, and he assent to receive it, by words only, this would be a good delivery, though the grantee die before taking it into actual possession. Kingsbury v. Burnside, 58 Ill. 327.

The recording of a deed is prima facie evidence of its delivery, the presumption being that when the maker of the deed parts with the possession of it to anybody, it was delivered for the benefit of the grantee. Sargent v. Roberts, 265 Ill. 218.

- No Particular Form Required.

No particular form or ceremony is required to constitute a delivery of a deed, provided the intention appear, and it may be done by acts alone, by doing something and saying nothing, or by words alone, by saying something and doing nothing, or by both acts and words. Vaughn v. Vaughn, 272 Ill. 22; Latshaw v. Latshaw, 266 Ill. 48; Prince v. Prince, 258 Ill. 312; Stevens v. Stevens, 256 Ill. 146; Riegel v. Riegel, 243 Ill. 630; Russell v. Mitchell, 223 Ill. 445; Baker v. Hall, 214 fll. 370; Munro v. Bowles, 187 Ill. 348;

Weaver v. Weaver, 182 Ill. 292; Walls v. Ritter, 180 Ill. 619; Rodemeier v. Brown, 169 Ill. 352; Shults v. Shults, 159 Ill. 660; Miller v. Meers, 155 Ill. 293; Rountree v. Smith, 152 Ill. 503; Provart v. Harris, 150 Ill. 47; Oliver v. Oliver, 149 Ill. 548; Douglas v. West, 140 Ill. 463; McElroy v. Hiner, 133 Ill. 166; Weber v. Christen, 121 Ill. 96; Otis v. Spencer, 102 Ill. 627; Byars v. Spencer, 101 Ill. 433; Gunnell v. Cockerill, 84 Ill. 321; Gunnell v. Cockerill, 79 Ill. 81; Kingsbury v. Burnside, 58 Ill. 327; Rivard v. Walker, 39 Ill. 414; Bryan v. Wash., 7 Ill. 565; Jummel v. Mann, 80 Ill. App. 295.

- To Grantee in Escrow.

There can be no delivery to the grantee as an escrow, for the reason that if the delivery to the grantee be absolute the title passes although there be an understanding between the parties that conditions shall attack. Russell v. Mitchell, 223 Ill. 444; Weber v. Christen, 121 Ill. 97.

— Manual Possession by Grantee Not Required.

It is not essential, in order to constitute a valid delivery of a deed, that it be placed in the manual possession of the grantee, it being sufficient if the transaction be for the benefit of the grantee, and if the grantor part with all control over the deed, with the intention of vesting title in the grantee. Vaughn v. Vaughn, 272 Ill. 23; Prince v. Prince, 258 Ill. 311; Hoyt v. Northup, 256 Ill. 608; Dagley v. Black, 197 Ill. 57; Munro v. Bowles, 187 Ill. 348; Weaver v. Weaver, 182 Ill. 292; Hawes v. Hawes, 177 Ill. 414; Rodemeier v. Brown, 169 Ill. 352; Shults v. Shults, 159 Ill. 661; Provart v. Harris, 150 Ill. 47; Weber v. Christen, 121 Ill. 96; Otis v. Spencer, 102 Ill. 627; Benneson v. Aiken, 102 Ill. 287; Byars v. Spencer, 101 Ill. 433; Thompson v. Candor, 60 Ill. 246; Bryan v. Wash., 72 Ill. 565.

— Mere Manual Possession by Grantee Insufficient.

Merely placing a deed in the possession of the grantee does not necessarily constitute a valid delivery. Weigand v.

Rutschke, 253 Ill. 264; Oswald v. Caldwell, 225 Ill. 233; Elliott v. Murray, 225 Ill. 113; Russell v. Mitchell, 223 Ill. 444; Hollenbeck v. Hollenbeck, 185 Ill. 103; Wilson v. Wilson, 158 Ill. 574; Oliver v. Oliver, 149 Ill. 548.

- To Grantee for Safekeeping.

There is no valid delivery of a deed which is handed to the grantee to be placed in the grantee's safe deposit box in a bank for safekeeping. Hoyt v. Northup, 256 Ill. 608; Bovee v. Hinde, 135 Ill. 148.

- Contingent.

A delivery of a deed to take effect only on the happening of a contingency such as the death of the grantor is invalid. Latshaw v. Latshaw, 266 Ill. 48; Benner v. Bailey, 234 Ill. 82; Russell v. Mitchell, 223 Ill. 444; Wilson v. Wilson, 158 Ill. 574; Cline v. Jones, 111 Ill. 569; Stinson v. Anderson, 96 Ill. 376.

- Voluntary Settlements.

In the case of deeds given by way of voluntary settlement, the law makes stronger presumptions than in ordinary deeds, especially where the grantee is an infant, the relationship of the parties and the motives resulting therefrom being presumed to induce such a conveyance, placing the burden on the grantor, or those claiming under him, to show that there was no delivery. Vaughn v. Vaughn, 272 Ill. 23; Hoyt v. Northup, 256 Ill. 609; Weigand v. Rutschke, 253 Ill. 264; Hill v. Kreiger, 250 Ill. 413; Riegel v. Riegel, 243 Ill. 630; Baker v. Hall, 214 Ill. 368; Rodemeier v. Brown, 169 Ill. 359; Cline v. Jones, 111 Ill. 567; Reed v. Douthit, 62 Ill. 352; Walker v. Walker, 42 Ill. 314; 5 Ill. App. 289; Masterson v. Cheek, 23 Ill. 75; Bryan v. Wash., 7 Ill. 568.

As Mixed Question of Law and Fact.

The question of delivery is a mixed question of law and fact. Vaughn v. Vaughn, 272 Ill. 22; Weigand v. Rutschke, 253 Ill. 263; Elliott v. Murray, 225 Ill. 112.

DELIVERY ORDER.

An order addressed, in England, by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order. Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, etc. Such an order is not a decument of title, and therefore does not transfer the property, or divest the vendor's lien for the purchase money, until it is acted on by the holders obtaining either (1) actual delivery, (2) an entry of his title in the wharfinger's books, or (3) the issue of a dock warrant in his name; which last operation would apparently presuppose the second. Until he does one of these things, the original owner may obtain delivery to himself, or transfer the property in the goods to some one else. 2 H. L. Cas. 309; 5 Ch. Div. 195; Benj. Sales, 684.

DELUSION.

A spontaneous conception and acceptance as a fact of that which has no real existence except in imagination and persistent adherence to it against all evidence; a conception that originated spontaneously in the mind without evidence of any kind to support it, which can be accounted for on no reasonable hypothesis, having no foundation in reality, and springing from a diseased or morbid condition of the mind. Owen v. Crumbaugh, 228 Ill. 400.

A belief in a state or condition of things in the existence of which no rational person would believe. Snell v. Weldon, 243 Ill. 519; Owen v. Crumbaugh, 228 Ill. 400; Schneider v. Manning, 121 Ill. 382.

A delusion is not a deduction from facts, but something purely imaginative, a figment of the brain. Smith v. Smith, 205 Ill. App. 116.

DEMAND.

A claim; a legal obligation. Demand is a word of art of an extent

word except "claim." Co. Litt. 291; 2 Hill (N. Y.) 220; 9 Serg. & R. (Pa.) 124; 6 Watts & S. (Pa.) 226.

Bringing suit upon a promissory note payable on demand is a sufficient demand. Luther v. Crawford, 116 Ill. App. 353.

DEMAND DEPOSIT.

A deposit payable on demand and subject to check. People v. Belt, 271 Ill. 348.

DEMANDANT.

The plaintiff or party who brings a real action. Co. Litt. 127; Comyn, Dig.

DEMEMBRATION.

In Scotch law. Maliciously cutting off or otherwise separating one limb from another. 1 Hume, 323; Bell, Dict.

DEMENS.

(Lat.) One who has lost his mind through sickness or some other cause: one whose faculties are enfeebled. Dean. Med. Jur. 481.

DEMESNE.

Lands of which the lord had the absolute property or ownership, as distinguished from feudal lands which he held of a superior. 2 Sharswood, Bl. Comm. 104; Cowell. Lands which the lord retained under his immediate control, for the purpose of supplying his table and the immediate needs of his household. Distinguished from that farmed out to tenants, called among the Saxons "bordlands." Blount; Co. Litt. 17a.

Own; original. Son assault demesne, his (the plaintiff's) original assault, or assault in the first place. 2 Greenl. Ev. § 633; 3 Bl. Comm. 120, 306.

DEMESNE AS OF FEE.

A man is said to be seised in his demesne as of fee of a corporeal inheritgreater in its signification than any other | ance, because he has a property dominicum or demesne in the thing itself. 2 Bl. Comm. 106. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be seised as of fee, and not in his demesne as of fee. Litt. § 10; 17 Serg. & R. (Pa.) 196; Jones, Land Tit. 166.

Formerly it was the practice in an action on the case—e. g. for a nuisance to real estate—to aver in the declaration the seisin of the plaintiff in demesne as of fee; and this is still necessary, in order to estop the record with the land, so that it may run with or attend the title. Archb. Civ. Pl. 104; Coke, Entr. 9, pl. 8; Lilly, Entr. 62; 1 Saund. 346; Willes, 508. But such an action may be maintained on the possession as well as on the seisin, although the effect of the record in this case upon the title would not be the same. Steph. Pl. 322; 1 Lutw. 120; 2 Mod. 71; 4 Term R. 718; 2 Wm. Saund. 113b; Cro. Car. 500, 575.

DEMESNE LANDS OF THE CROWN.

That share of lands reserved to the crown at the original distribution of landed property, or which came to it afterwards by forfeiture or otherwise. 1 Sharswood, Bl. Comm. 286; 2 Steph. Comm. 550.

DEMI-MARK.

A sum of money (6s. 8d., 3 Bl. Comm. App. v.) tendered and paid into court in certain cases in the trial of a writ of right by the grand assize. Co. Litt. 294b; Booth, Real Actions, 98.

It was paid by the tenant to obtain an inquiry by the grand assize into the time of the demandant's seisin. 1 Reeve, Hist. Eng. Law, 429; Stearns, Real Actions, 378, and note. It compelled the demandant to begin. 3 Chit. Pl. 1373. It is unknown in American practice. 13 Wend. (N. Y.) 546; Stearns, Real Actions, 378.

DEMISE.

(1) A conveyance, either in fee for life or for years. A lease or conveyance for

a term of years. According to Chief Justice Gibson, the term strictly denotes a posthumous grant, and no more. 5 Whart. (Pa.) 278. See 4 Bing. N. C. 678; 2 Bouv. Inst. note 1774 et seq.

(2) A term nearly synonymous with "death," appropriated in England especially to denote the decease of the king or queen.

Imports Covenant of Title.

The words "demise" and "demised" in a lease, import a covenant on the part of the lessor, of good right and title to make the lease. Harms v. McCormick, 132 Ill. 108.

Imports Legal Estate in Lessor.

The word "demise," in a lease, imports an estate in the lessor. Wells v. Mason, 5 Ill. 91.

Imports Covenant of Quiet Enjoyment.

The word "demise," in a lease, imports a covenant of quiet enjoyment. Harms v. McCormick, 132 Ill. 108; Wells v. Mason, 5 Ill. 91.

DEMISE AND RE-DEMISE.

A conveyance by mutual leases made from one to another on each side of the same land, or of something issuing from it. A lease for a given sum,—usually a mere nominal amount,—and a release for a larger rent. Toullier, Dr. Civ.; Whishaw; Jacob.

DEMISE OF THE KING.

The natural dissolution of the king. The term is said to denote in law merely a transfer of the property of the crown. 1 Bl. Comm. 249. By demise of the crown, we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual. Plowd. 117, 234.

A similar result, viz., the perpetual existence of the president of the United States, has been secured by the constitution and subsequent statutes. 1 Sharswood, Bl. Comm. 249.

DEMISED.

Guardian's Lease.

No covenants are to be implied from the fact that a guardian "demised" and leased the property of the ward, whether with or without authority to make the lease, it being unreasonable to hold officers and agents of the law on implied covenants. Webster v. Conley, 46 Ill. 17.

DEMONSTRATION.

(Lat. demonstrare, to point out). Whatever is said or written to designate a thing or person.

Several descriptions may be employed to denote the same person or object; and the rule of law in such cases is that, if one of the descriptions be erroneous, it may be rejected, if, after it is expunged, enough will remain to identify the person or thing intended. For falsa demonstratio non nocet. The meaning of this rule is that, if there be an adequate description with convenient certainty of what was contemplated, a subsequent erroneous addition will not vitiate it. complement of this maximum is, non accipi debent verba in demonstrationem falsam quae competent in limitationem veram; which means that if it stand doubtful upon the words whether they import a false reference or demonstration, or whether they be words of restraint that limit the generality of the former words, the law will never intend error or falsehood. If, therefore, there is some object wherein all the demonstrations are true, and some wherein part are true and part false, they shall be intended words of true limitation to ascertain that person or thing wherein all the circumstances are true. 4 Exch. 604, per Alderson, B.; 8 Bing. 244; Broom, Leg. Max. 490; Plowd. 191; 7 Cush. (Mass.)

The rule that falsa demonstratio does not vitiate an otherwise good description applies to every kind of statement of fact. Some of the particulars in an averment in a declaration may be rejected if the declaration is sensible without them, and by their presence is made insensible or defective. Yelv. 182.

DEMONSTRATIVE LEGACY.

Defined.

A bequest of sums of money which are not in itself specific, but are made payable out of a particular fund belonging to the testator. Tanton v. Keller, 167 Ill. 139.

What Constitutes.

A legacy is demonstrative where the language by which it is given shows an intention that whether or not the particular property remained a portion of the estate the legacies should be paid, but if such property was a portion of the estate it should be sold and the proceeds form primarily but not exclusively the fund from which the legacy should be paid. Meily v. Knox, 191 Ill. App. 134.

Elements.

In order to constitute a demonstrative legacy, two elements must appear, first, that the testator intended to make an unconditional gift in the nature of a general legacy, and second, that the bequest must indicate the fund out of which it is payable. Meily v. Knox, 191 Ill. App. 136.

"Specific Legacy" Distinguished.

The distinction between a specific and a demonstrative legacy involves not merely a technical question, depending upon the precise language of the bequest, but a substantial inquiry respecting the intention of the testator, as shown by the terms of the particular legacy, examined in connection with all the other provisions of the will. Melly v. Knox, 191 Ill. App. 136.

Rule of Construction As To.

Courts will lean to the construction of a legacy as demonstrative rather than as specific unless the will fairly shows a contrary intention. Meily v. Knox, 191 Ill. App. 135.

DEMURRER.

Function.

A demurrer involves only facts alleged in the pleadings demurred to, and raise

only questions of law as to the sufficiency of the pleadings which arise upon the face thereof, and tests the mode of statement. Wood v. Papendick, 268 Ill. 385.

Bill in Chancery.

The office of a demurrer to a bill in equity is to test the sufficiency of a bill on its face. Dunne v. Rock Island County, 273 Ill. 57.

The office of a demurrer to a bill in equity is to deny, in form and substance, the complainant's right to have his case considered in a court of equity, and to admit all the allegations that are properly pleaded. Wangelin v. Goe, 50 Ill. 461.

The office of a demurrer to a bill in chancery to bring the merits of the case before the court, by admitting all the facts well pleaded, and asking the court if, on the facts so admitted, the complainant is entitled to the relief he asks, or to have the matters of the bill adjudged in his favor. Hickey v. Stone, 60 Ill. 461.

Joinder in Error As.

A joinder in error operates as a demurrer. Cass v. Duncan, 260 Ill. 230.

Motion to Dissolve Injunction As.

A motion to dissolve an injunction operates as a demurrer to the bill. Wangelin v. Goe, 50 Ill. 461.

DEMURRER TO THE EVIDENCE.

Function.

The office of a demurrer to the evidence is to withdraw the issues from the jury, in order that the court may pronounce the law upon the facts admitted by the demurrer, the defendant in effect say ever that all the facts such evidence tends to prove are admitted to exist, but upon those facts you are not entitled to recover, and on that we demand the judgment of the court. Valtez v. Ohio & M. Ry. Co., 85 Ill. 501. To the same effect see Phillips v. Dickerson, 85 Ill. 14; Fent v. Toledo, P. & W. Ry. Co., 59 Ill. 350.

Motion to Exclude Evidence As.

A motion to exclude the evidence and to instruct the jury to find for the defendant is in the nature of a demurrer to the evidence, admitting not only all the evidence proves, but also all it tends to prove. Sherwood v. Rieck, 104 Ill. App. 374; Bartelott v. International Bank, 119 Ill. 269; Frazer v. Howe, 106 Ill. 573; Pennsylvania Co. v. Conlan, 101 Ill. 105; Phillips v. Dickerson, 85 Ill. 15; Chadbourne v. Illinois C. R. Co., 104 Ill. App. 335; Cohen v. Chicago & N. W. R. Co., 104 Ill. App. 322.

DENARIATE.

As much land as is worth one penny per annum. Rapalje & L.

DENARIUS.

(Law Lat.; Fr. denier.) A penny; an English penny. By the statute called Compositio Mensurarum, 51 Edw. I. (Hen. III.), it was declared that the penny sterling of England, denarius Angliae qui nominatur sterlingus, should weigh 32 grains of corn from the middle of the ear, and 20 pennies (penny weights) should make an ounce, and 12 ounces a pound. Spelman; Fleta, lib. 2, c 12. See 2 Inst. 575.

In the Roman Law.

A silver coin of the value of ten asses, or ten pounds of brass. Its value in modern money is estimated at 7 % d. sterling, or about 14 ½ cents. Enc. Am. Brande.

DENARIUS TERTIUS COMITATUS.

(Law Lat.) In old English law. The third penny of the county; the third part of the fines and profits arising from the county court, which anciently were reserved to the comes, or earl, as his official stipend. Spelman, voc. "Comes;" LL. Edw. Conf. c. 31; Cowell.

DENMAN'S (LORD) ACT.

St. 6 & 7 Vict. 85. For the amendment of the law of evidence, which pro-

vides that no person offered as a witness shall thereafter be excluded by reason of incapacity, from crime or interest, from giving evidence. Wharton.

DENMAN'S (MR.) ACT.

St. 28 & 29 Vict. 18. For amendment of procedure in criminal trials, allowing counsel to sum up the evidence in criminal as in civil trials, provided the prisoner be defended by counsel. Wharton.

DENSE SMOKE.

In order to prove a violation of an ordinance declaring that to permit "dense smoke" to escape from the stack of a locomotive, steamboat or building is a public nuisance, it is not incumbent on the government to prove that the smoke complained of was not only dense but detrimental to property or annoying to the public at large, it being common knowledge that smoke becomes soot, which falls and blackens where it rests. and is injurious to vegetation and many kinds of goods and is annoying to people, which knowledge no jury could be without. Marshall Field & Co. v. Chicago, 44 Ill. App. 411.

An ordinance declaring that to permit a "dense smoke" to escape from the stack of a locomotive, steam boat or building is a public nuisance is to be construed as using the quoted expression as it is commonly employed, and as it would be understood by everybody that has ever seen a volume of dark, dense smoke as it comes from the smokestack or chimney where common soft or bituminous coal is used for fuel in any considerable quantities. Harmon v. Chicago, 110 Ill. 407; Chicago v. Dunham, etc., Co., 161 Ill. App. 310; Glucose, etc., Co. v. Chicago, 138 Fed. 214.

DEODAND.

Any personal chattel whatever which is the immediate cause of the death of a human creature, which is forfeited to the king, to be distributed in alms by his high almoner. 1 Bl. Comm. 301; 1 Hale, P. C. 422.

DEPART.

In Maritime Law.

To leave a port; to be out of a port. To depart imports more than to sail, or set sail. A warranty in a policy that a vessel shall depart on or before a particular day is a warranty not only that she shall sail, but that she shall be out of the port on or before that day. 3 Maule & S. 461; 3 Kent, Comm. 307, note. "To depart" does not mean merely to break ground, but fairly to set forward upon the voyage. 6 Taunt. 241.

DEPARTURE.

A departure in pleading is where a party quits or departs from the case or defense he has first made and has recourse to another; for example where the replication contains matter not pursuant to the declaration and which does not support and fortify it. Hellen v. Hellen, 170 Ill. App. 471; Weiss v. Sandoval, etc., Co., 165 Ill. App. 418.

If the pleader vary from his count or plea in his replication or rejoinder in time, place or other matter, there is no departure where the variance is immaterial. Hellen v. Hellen, 170 Ill. App. 471.

Matter which maintains, explains, and fortifies the declaration or plea, is not a departure. Hellen v. Hellen, 170 Ill. App. 471.

DEPARTURE IN DESPITE OF COURT.

This took place where the tenant, having once made his appearance in court upon demand, failed to reappear when demanded. Co. Litt. 139a. As the whole term is, in contemplation of law, but a single day, an appearance on any day, and a subsequent failure to reappear at any subsequent part of the term, is such departure. 8 Coke, 62a; 1 Rolle, Abr. 583; Metc. Yelv. 211; Roscoe, Real Actions, 283.

DEPENDENCY.

A territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe.

It differs from a "colony," because it is not settled by the citizens of the sovereign or mother state; and from "possession," because it is held by other title than that of mere conquest. For example, Malta was considered a dependency of Great Britain in the year 1813. 3 Wash. C. C. (U. S.) 286. See Act Cong. March 1. 1809, commonly called the "Nonimportation Law."

DEPENDENT.

Defined.

One who depends; one who is sustained by another, or who relies on another for support or favor. Vickers, J., dissenting opinion. Royal League v. Shields, 251 Ill. 256.

Insurance.

Whether or not a beneficiary is "dependent," within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, is a question of fact. Royal League v. Shields, 251 Ill. 253; Alexander v. Parker, 144 Ill. 366.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, is in some sense used as referring to the dependence which usually obtains in the family relation, although that construction would not apply to every case. Royal League v. Shields, 251 Ill. 255; Modern Woodmen v. O'Connor, 182 Ill. App. 567.

Where the statute and charter of an association provide for the payment of benefit funds to persons dependent upon members, the word "dependent" means some person or persons dependent for support in some way upon the deceased. Alexander v. Parker, 144 Ill. 866; Dunbar v. Royal League, 184 Ill. App. 6.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶6646), relating to fraternal beneficiary societies, refers to one who is sustained by another or relies for support upon the aid of another. Royal League v. Shields, 251 Ill. 253; Murphy v. Nowak, 223 Ill. 307; Alexander v. Parker, 144 Ill. 366; Dunbar v. Royal League, 184 Ill. App. 7; Wojanski v. Wojanski, 136 Ill. App. 618. To the same effect see Martin v. Modern Woodmen, 111 Ill. App. 101.

The term "dependent," used in a statute of the state of Wisconsin substantially similar to section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, means some person or persons dependent for support in some way upon the member. Duenser v. Supreme Council, 178 Ill. App. 651.

- Liberally Construed.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, should be liberally construed, and should be held to include a dependence founded on a moral duty to provide for another as well as that arising from a legal duty. Royal League v. Shields, 251 Ill. 254.

- Does Not Rest On Contract.

The question whether a beneficiary is "dependent," within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, does not rest alone on a promise or contract, but must be determined on the facts of each case. Royal League v. Shields, 251 Ill. 254.

- Absence of Legal or Moral Duty.

One may be "dependent," within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, although no legal or moral duty rested upon the member to give aid to the dependent. Royal League v. Shields, 251 Ill. 255; Alexander v. Parker, 144 Ill. 367; Modern Woodmen v. O'Connor, 182 Ill. App. 567.

- Adopted Child As.

An adopted child may or may not be a dependent, without reference to whether

there has been a legal adoption. Royal League v. Shields, 251 Ill. 254.

- Affection or Companionship.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, excludes dependence for favor or for affection or companionship. Royal League v. Shields, 251 Ill. 254; Alexander v. Parker, 144 Ill. 366; Dunbar v. Royal League, 184 Ill. App. 6; Martin v. Modern Woodmen, 111 Ill. App. 101.

- Affianced Wife.

An affianced wife, who is bound to a member of a fraternal beneficiary society by no tie other than that of an engagement of marriage, is not "dependent" on such member within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies. Alexander v. Parker, 144 Ill. 368; Palmer v. Welch, 132 Ill. 148; Parke v. Welch, 33 Ill. App. 194.

The term "dependents," used in the charter of a fraternal beneficiary society, naming the persons who may become beneficiaries in certificates issued to members of the order, does not include an affianced wife. Dunbar v. Royal League, 184 Ill. App. 10.

- Brother-in-Law.

The brother-in-law of a member of a fraternal beneficiary society cannot be "dependent," within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies. Grand Lodge v. Ehlman, 246 Ill. 558.

- Father Excluded.

The father of a member of a fraternal beneficiary society who is not shown to be actually dependent on the member at the time of the member's death is not "dependent," within the meaning of a statute of the state of Missouri substantially similar to section 1 of the Act of 1893 (J. & A. ¶6646), relating to fraternal beneficiary societies. Grimme v. Grimme, 198 Ill. 273.

- Divorced Wife Receiving Alimony.

A woman who since the issuance of a certificate to a member of a fraternal beneficiary society has been divorced from him, and who at the time of his death was receiving alimony from him, is "dependent" within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies. Martin v. Modern Woodmen, 111 Ill. App. 101.

- Paramour.

A woman with whom a member of a fraternal beneficiary society has cohabited as his wife, although not married to her, and whom the member has treated and supported as such, is "dependent" on the member within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, although the member has during such cohabitation with such woman a living and undivorced wife from whom he is separated. Duenser v. Supreme Council, 178 Ill. App. 651; Wojanski v. Wojanski, 136 Ill. App. 618; Senge v. Senge, 106 Ill. App. 142.

- Partial Dependence Sufficient.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, does not import a complete dependence upon the member for support, but is satisfied where a regular and partial dependence on the member is shown. Wojanski v. Wojanski, 136 Ill. App. 618; Martin v. Modern Woodmen, 111 Ill. App. 101.

- Person not Related to Member.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, was intended by the legislature to include persons in no way related to the member. Alexander v. Parker, 144 Ill. 365.

One not related to a member of a fraternal beneficiary society, in whom the member has become interested and has promised to provide and considered as his adopted daughter, but who was never one of the member's household, is not "dependent," within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies, although the member in his lifetime did in fact contribute to such person's support. Royal League v. Shields, 251 Ill. 255. (Aff. 159 Ill. App. 61).

A child whom a member of a fraternal beneficiary society, not related to her, has taken from an orphan asylum, and thereafter supported, but who has not been legally adopted by the member, is and remains "dependent" on the member, within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies during minority or so long thereafter as the parties sustained the relation of parent and child towards each other. Murphy v. Nowak, 223 Ill. 307.

- Refers to Time of Member's Death.

The term "dependent," used in section 1 of the Act of 1893 (J. & A. ¶6646), relating to fraternal beneficiary societies, refers to those who are dependent at the time of the death of the member, and does not include such as were dependent when the certificate was issued but have ceased to be such. Murphy v. Nowak, 223 Ill. 311.

- Step-Mother.

A step-mother who is a member of the same family as a member of a fraternal beneficiary society, and who is shown to have been partially dependent on him for support is "dependent" within the meaning of section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies. Modern Woodmen v. O'Connor, 182 Ill. App. 567.

- Trivial Assistance.

Trivial or casual or wholly charitable assistance rendered to a person by a member of a fraternal beneficiary society does not render such person "dependent" on the member within the meaning of a statute of the state of Massachusetts substantially similar to section 1 of the Act of 1893 (J. & A. ¶ 6646), relating to fraternal beneficiary societies. Alexander v. Parker, 144 Ill. 368; Royal League v. Shields, 159 Ill. App. 62. To the same

effect see Martin v. Modern Woodmen, 111 Ill. App. 101.

DEPOPULATIO AGRORUM.

In old English law. The crime of destroying, ravaging, or laying waste a country. 2 Hale, P. C. 333; 4 Bl. Comm. 373.

DEPORTATIO.

(Lat.) In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, in insulam deportatur, and thus taken out of the number of Roman citizens, ex numero civium Romanorum tollitur, being treated as though he were dead. Inst. 1, 12, 1. It was banishment for life, attended with the loss of civil rights, and the forfeiture Relegatio was banishment of property. for years, without the loss of civil rights. Dig. 48. 22; Calv. Lex. Bracton uses the term deportatio as synonymous with "exile," "abjuration of the realm," and "outlawry." Bracton, fol. 136b.

DEPOSIT.

Defined.

That which is placed anywhere for safe keeping, especially a sum of money left with a bank or broker, subject to order; money lodged in a bank for safe keeping. Estate of Ramsey v. Whitbeck, 81 Ill. App. 218.

Strict Meaning.

Strictly speaking, a "deposit" signifies only bonds or bills, or bullion deposited with a bank at interest, and not capable of being withdrawn except after certain specified notice. Estate of Ramsey v. Whitbeck, 81 Ill. App. 218.

Broad Sense.

The word "deposit," in its broad and comprehensive sense, as commonly used and understood in banking and commercial circles as well as by the public generally, includes all deposits made in a bank, and are so classified and designated by bankers and banking officials in mak-

ing up a statement of a bank's assets and liabilities. People v. Belt, 271 Ill. 348.

Classification.

Deposits are of two kinds—general and special. People v. Belt, 271 Ill. 348.

Criminal Code.

The word "deposit," used in section 1 of the Act of 1879 (J. & A. ¶ 3617), relating to the offense of the receipt by bankers of money, etc., after knowledge of their insolvency, is used in its generally understood and accepted meaning, and as including all deposits, of every kind and character, made in a bank in the usual and ordinary course of its business, whether in the form of general, special, time or demand deposits. People v. Belt, 271 Ill. 349.

As Bailment.

A naked bailment of goods to be kept for the bailor without recompense. Gray v. Merriam, 148 Ill. 186.

DEPOSIT ACCOUNT.

Money deposited with a banker at interest for some specified time. Estate of Ramsey v. Whitbeck, 81 Ill. App. 218.

A "deposit account" is opposed to a "current account." Estate of Ramsey v. Whitbeck, 81 Ill. App. 218. See also Current Account.

DEPOSITARY.

A stakeholder of money bet upon a game or other matter of chance is regarded as the depositary of the parties. McLean v. Wilson, 36 Ill. App. 658.

DEPOSITION.

The testimony of a witness reduced to writing, in due form of law, by virtue of a commission or other authority of a competent tribunal, or according to the provisions of some statute law, to be used on the trial of some question of fact in a court of justice. In its generic sense, it embraces all written evidence verified by oath, and includes affidavits, but in legal

language, a distinction is maintained between depositions and affidavits. 3 Blatchf. (U. S.) 456.

In its technical sense, it is confined to the written testimony of a witness given in a judicial proceeding. 53 Am. Dec. 270.

DEPOSITUM.

(Lat. from deponere, to deposit.) In the civil and common law. A naked bailment of goods, to be kept for the bailor without reward, and to be returned when he shall require it. Story, Bailm. §§ 4, 41; 2 Kent, Comm. 558, 559; Jones, Bailm. 36; Inst. 3. 15. 3; Bracton, fol. 100b; Dig. 16. 3; Code, 4. 34; Fleta, lib. 2, c. 56, § 7. Otherwise termed "deposit"; the bailor being in this case termed the "depositor," and the bailee the "depositary." Bell. Dict.

DEPOT.

Plat—Does Not Import Intention to Dedicate.

Where an owner of land plats it into lots and blocks, designing on the plat the streets separating the blocks, and also shows on his plat two strips of land adjoining a railroad right of way, which are marked on the plat "depot," it cannot be inferred from such facts that the owner intended to dedicate such strips to public use, although both strips were for some time used by the public for business in connection with the railway, the use indicated by the quoted word being merely that of depot grounds, which is a private and not a public use. McWilliams v. Morgan, 61 Ill. 93.

DEPRECIATE.

A verb meaning to fall in value; to become of less worth; to sink in estimation. National Bank v. Baker, 27 Ill. App. 359.

DEPRECIATING.

Defined.

The present participle of the verb "depreciate," used intransitively. National Bank v. Baker, 27 Ill. App. 359.

Collateral Note.

A provision in a collateral note authorizing a sale of the collateral in case of the collateral "depreciating in market value" has reference to a security that becomes less valuable in market after it is pledged than it was at the time it was pledged, and does not apply to a security the marketable condition of which is unchanged, but which was at the time of the pledge, and has remained, worthless. National Bank v. Baker, 128 Ill. 538.

A warrant of attorney contained in a collateral note empowering the holder to sell the collateral in case of its "depreciating" in value applies, by the quoted term, only to what might happen in the then future, and does not include a case where part of the collateral, a certificate of stock, was forged, and of no value when assigned as collateral. National Bank v. Baker, 27 Ill. App. 359.

DEPRIVED.

Divestiture of Title.

Section 2 of article 2 of the Constitution of 1870, providing that persons shall not be "deprived" of property, etc., without due process of law, refers, by the quoted term, to cases where one's property is taken away from him, so that he is divested of its title and possession. Burdick v. People, 149 Ill. 606.

Remote Injury Excluded.

Section 2 of article 2 of the Constitution of 1870, providing that persons shall not be "deprived" of property, etc., without due process of law, does not mean by the quoted term, that in the exercise of the functions of government private property may not receive remote injury without contravening the constitution, but permits a greater or less impairment of the value of such property by regulations of trade, with a view to the public interests, unless such regulations virtually take away and destroy those rights in which the property consists, and unless the destruction is, for all substantial purposes, total. Munn v. People, 69 Ill. 88.

DEPUTY.

One authorized by an officer to exercise the office or right which the officer possesses, for and in place of the latter.

A deputy differs from an assignee in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer except in special cases, but a deputy has not any interest in the office, but is only the shadow of the officer in whose name he acts. And there is a distinction between doing an act by an agent or by a deputy. An agent can only bind his principal when he acts in the name of the principal. But a deputy may do the act, and sign his own name, and bind the principal, for a deputy has in law the whole power of his principal. Wharton.

DERELICT.

Abandoned; deserted; cast away. Land left uncovered by the receding of water from its former bed. 2 Rolle, Abr. 170; 2 Bl. Comm. 262; 1 Crabb, Real Prop. 109.

When so left by degrees, the derelict land belongs to the owner of the soil adjoining; but when the sea retires suddenly, it belongs to the government. 2 Bl. Comm. 262; 1 Brown, Civ. Law, 239; 1 Sumn. (U. S.) 328, 490; 1 Gall. (U. S.) 133; Bee, Adm. (U. S.) 62, 178, 260; Ware (U. S.) 332.

Personal property abandoned or thrown away by the owner in such manner as to indicate that he intends to make no further claim thereto. 2 Bl. Comm. 9; 2 Reeve, Hist. Eng. Law, 9; 1 C. B. 112; Broom, Leg. Max. 261.

DEROGATORY CLAUSE.

In a will, this is a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorfed by violence, or otherwise improperly obtained.

By the law of England such a clause would be void, as tending to make the will irrevocable. Wharton.

DESCEND.

Technical Meaning.

The legal and technical meaning of the word "descend" is to pass by inheritance by operation of law. Harvey v. Ballard, 252 Ill. 63.

Descent Act.

Property cannot "descend" to a person, within the meaning of clause 5 of section 2 of the Descent Act (J. & A. ¶ 4203), relating to the rules of descent where the intestate is a bastard, where the person claiming to inherit is obliged to trace relationship to the bastard through nonresident aliens. Meadow-croft v. Winnebago County, 181 Ill. 510.

Property cannot "descend" to a person, within the meaning of clause 5 of section 1 of the Descent Act (J. & A. ¶ 4202), relating to the rules of descent, where the person claiming to inherit is obliged to trace his descent through a nonresident alien. Meadowcroft v. Winnebago County, 181 Ill. 508; Beavan v Went, 155 Ill. 607.

The term "descend," used in clause b of section 1, and clause 5 of section 2 of the Descent Act (J. & A. ¶¶ 4202, 4203), relating to the rules of descent, refer to the title by which one person, on the death of another, acquires the real estate of the latter as his heir at law. Meadow-croft v. Winnebago County, 181 Ill. 509.

Will.

A will providing that property be conveyed to a trustee for the benefit of a child for life and further providing that such property shall then "descend" to the heirs of such child uses the quoted word as meaning that the title should pass, by virtue of his will, in like manner as property descends without any conveyance and as distinguished from a conveyance or grant. Harvey v. Ballard, 252 Ill. 63.

A will devising property to a son for life and providing that it shall "descend" to his children at his death, if he leaves children surviving him, and if not it shall "descend" to his heirs at law, in both cases in fee, is shown by a consideration of the whole paragraph not to use the quoted word in the sense of passing lands by succession, as where an estate vests by operation of law in the heirs upon the death of the ancestor, but signifies that the children of the life tenant, if any survive, shall succeed immediately to the possession of the lands upon his death. Hanes v. Central, etc., Co., 262 Ill. 90.

DESCENDANT.

Defined.

A descendant is a person who is descended from another,—that is, one who proceeds from the body of another, however remotely. Bates v. Gillett, 132 Ill. 297.

Those who have issued from an individual, including his children, grand-children, and their children to the remotest degree. Amb. 327; 2 Brown, 30, 230; 3 Brown, 367; 1 Rop. Leg. 115; 2 Bouv. Inst. note 1956.

The descendants from what is called the "direct descending line." The term is opposed to that of "ascendants."

"Descendants" is a good term of description in a will, and includes all who proceed from the body of the person named; as grandchildren and greatgrandchildren. Amb. 397; 2 Vern. 108, note 2; 2 Hilliard, Real Prop. 242.

There is a difference between the number of ascendants and descendants which a man may have. Every one has the same order of ascendants, though they may not be exactly alike as to numbers, because some may be descended from a common ancestor. In the line of descendants they fork differently, according to the number of children, and continue longer or shorter, as generations continue or cease to exist. Many families become extinct, while others continue. The line of descendants is, therefore, diversified in each family.

Converse of "Ascendant."

The word "descendant" is the converse or opposite of "ascendant." Bates v. Gillett, 132 Ill. 297.

Includes All Who Descend from Stock.

The word "descendant" includes every person descended from the stock referred to, and the issue of the body of a person named, of every degree, such as children, grandchildren, great grandchildren, and all others in the direct descending line. Bates v. Gillett, 132 Ill. 297.

"Issue" Coextensive.

The word "descendant" is coextensive with "issue" but does not embrace those not of issue. Bates v. Gillett, 132 Ill. 297.

"Heir-at-Law"—"Next of Kin" Distinguished.

The word "descendant" is not to be understood as embracing "heirs at law" or "next of kin." Bates v. Gillett, 132 Ill. 297.

As Used in Will.

"Descendants" is a good term of description in a will, and includes all who proceed from the body of the person named, to the remotest degree. Bates v. Gillett, 132 Ill. 297.

DESCENT.

Defined.

Hereditary succession to an estate in realty. Adams v. Akerlund, 168 Ill. 640. "It is true that the word 'descent,' in its technical, legal meaning, denotes the transmission of real estate, or some interest therein, on the death of the owner intestate, by inheritance, to some person according to certain rules of law. such meaning it is distinguished from transmission by devise, which is technically by purchase, and also from the transmission of personal property, the title of which passes to the administrator, and, after the payment of all debts and claims against the estate, is governed by certain rules of distribution. If the meaning of the term 'descent' is so limited to its technical significance, the pro-

visions of the act relating to the distribution of personal estate are not within such meaning. The term as used in the act, and as it has always been used in our statutes, includes the course of transmission, by operation of law, of both real and personal property when the owner dies intestate, or his estate or any part thereof is deemed and taken as intestate Any provision, therefore, as to estate. what shall be intestate estate in the law is germane to the general subject. this character are the provisions of the act that all estate not devised or bequeathed in the last will and testament of any person shall be distributed in the same manner as the estate of an intestate; that if, after making a last will and testament, a child shall be born to any testator, and no provision be made in such will for such child, unless it shall appear by the will that it was the intention of the testator to disinherit such child, the devises and legacies given by such will shall be abated to raise a share for such child as though the testator had died intestate; that under certain conditions the estate disposed of by a devise or legacy shall be considered and treated in all respects as intestate estate. and that in case of the marriage of a person after having made a will the estate shall be intestate estate and shall pass under the provision of the statute. The provision that a marriage shall be deemed a revocation of a prior will is in effect a declaration that in such an event the estate shall be deemed and taken to be intestate estate, so far as such will is concerned. It cannot be said that the provision has no proper connection or relation with the descent of property as intestate estate, or that it could operate as a fraud or surprise upon the legislature as a provision foreign to the subject of legislation expressed in the title. It was passed at the same session of the legislature as the Statute of Wills, providing for a revocation of a will by particular means mentioned in that statute. and the two provisions are to be read together, as embracing the legislative will on that subject." Hudnall v. Ham, 172 Ill. 83, 84, 85.

Blackstone's Definition.

The title by which one person, upon the death of another, acquires the real estate of the latter as his heir-at-law. Meadowcroft v. Winnebago County, 181 Ill. 509; Female Academy v. Sullivan, 116 Ill. 390.

Succession Synonymous.

The word "succession" is often used synonymously with "descent." Adams v. Akerlund, 168 Ill. 640.

Inheritance Synonymous.

The word "inheritance" is often used synonymously with "descent." Adams v. Akerlund, 168 Ill. 639.

Classification.

Descents are distinguished as mediate and immediate. Beavan v. Went, 155 Ill. 604. See also Immediate Descent.

Applies to Real Estate.

The term usually applies to the devolution of real property. Adams v. Akerlund, 168 III. 639.

DESERTION.

Marital Status.

The voluntary separation of one of the married parties from the other, or the voluntary refusal to renew a suspended cohabitation, without justification either in the consent or the wrongful conduct of the other. Virtue v. People, 122 Ill. App. 225.

What Constitutes.

Where parties resided in Toledo, Ohio, and the woman went to another place to be confined, and the husband still later leaves Toledo and established himself in Chicago, where he prepares a suitable home and writes to his wife to come there and live with him, her refusal to comply with the request for reasons not a cause of divorce will entitle the husband to a divorce on the ground of desertion if the separation continues for the statutory period. Walton v. Walton, 114 Ill. App. 118.

"Abandonment" Synonymous.

The words "desertion" and "abandonment" are used interchangeably, and mean the same thing. Virtue v. People, 122 Ill. App. 225.

"Separation" Synonymous.

An indictment charging defendant with perjury in testifying in a divorce suit that his wife "was guilty of desertion" is maintained by proof that defendant testified that there was a separation between himself and his wife because of his wife's refusal to live with him, or come where he was. Hereford v. People, 197 Ill. 241.

"Absence" Synonymous.

Desertion and absence are treated as synonymous in our decisions. Elzas v. Elzas, 171 Ill. 639; Fritz v. Fritz, 138 Ill. 439. See Carter v. Carter, 62 Ill. 447, where the two terms are seemingly treated as synonymous.

Elements.

To be guilty of "desertion," within the meaning of a statute of the state of Missouri, substantially similar to section 1 of the Divorce Act (J. & A. ¶ 4215), defining causes of divorce, there must be proved, first, cessation of cohabitation; second, the intention not to resume cohabitation; third, the absence of complainant's consent to separation. Virtue v. People, 122 Ill. App. 225.

Imports Abnegation of All Conjugal Duties.

The word "desertion," in a statute of the state of Massachusetts substantially similar to section 1 of the Divorce Act (J. & A. ¶ 4215), defining the causes of divorce, does not signify merely a refusal of matrimonial intercourse, but imports a cessation of cohabitation, a refusal to live together, which involves an abnegation of all the duties and obligations resulting from the marriage contract. Fritz v. Fritz, 138 Ill. 440.

Separation by Consent Excluded.

A separation by mutual consent of the parties is not desertion in either. Virtue v. People, 122 Ill. App. 225.

DESPOT.

This word, in its original and most simple acceptation, signifies "master and supreme lord." It is synonymous with "monarch;" but taken in bad part, as it is usually employed, it signifies a "tyrant." In some states, "despot" is the title given to the sovereign, as king is given in others. Enc. Lond.

DESPOTISM.

That abuse of government where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Rutherforth, Inst. bk., c. 20, § 1.

DESTINATION.

The intended application of a thing. For example, when a testator gives to a hospital a sum of money to be applied in erecting buildings, he is said to give a destination to the legacy. Mill stones taken out of a mill to be picked, and to be returned, have a destination, and are considered real estate, although detached from the freehold. Heirlooms, although personal chattels, are, by their destination, considered real estate; and money agreed or directed to be laid out in land is treated as real property. Newland, Cont. c. 3; 3 Wheat. (U. S.) 577; 2 Bell, Comm. 2; Ersk. Inst. 2. 2. 14; Fonbl. Eq. bk. 1, c. 6, § 9.

In Common Law.

The port at which a ship is to end her voyage is called her "port of destination."

The place for ultimate delivery of goods intrusted for carriage.

DETERMINABLE OR QUALIFIED FEE.

An estate which may end on the happening of an event is what is called a determinable or qualified fee. North v. Graham. 235 Ill. 180.

One which has a qualification subjoined to it, and which must be determined whenever the qualification annexed | to denote a gift, by will, of real estate,

to it is at an end. A limitation to a man and his heirs on the part of his father affords an example of this species of estate. Litt. § 254; Co. Litt. 27a, 220; 1 Preston, Est. 449; 2 Bl. Comm. 109; Cruise, Dig. tit. 1, § 82; 2 Bouv. Inst. note 1695.

DETRACTARE.

(Law Lat.) In old English law. To draw, or drag; to draw along; to draw or drag a convict to the gallows or stake. Detractentur et suspendentur, they shall be drawn and hanged. Fleta, lib. 1, c. 37, § 4. Detractari et comburi, to be drawn and burned. Fleta, lib. 1, c. 37, § 2.

DEUNX.

In the Roman (Lat. pl. deunces.) A division of the as, containing eleven unciae or duodecimal parts: the proportion of eleven-twelfths. 2 Bl. Comm. 462, note; Tayl. Civ. Law, 492.

DEVEST.

(Law Fr. devester, descester; Law Lat. devestire.)

In Old English Law.

To take away; to deprive of, as a possession, title, or estate; the opposite of "invest." Termes de la Ley; Cowell. Sometimes written "divest," but "devest" has the support of the best authority. Co. Litt. 15a, 15b; Hale, Anal. § 32.

In Modern Law.

To take or draw away. "The whole estate was devested and drawn out of the feoffees." 4 Kent, Comm. 240. feoffment made by the feoffees devested all the estates." 4 Kent, Comm. 240.

To strip or deprive. "The statute devested the feoffees of all the estate." 4 Kent, Comm. 240, 239.

DEVISE.

Ordinary Meaning.

The word "devise" is usually employed

or an interest therein. Rickman v. Meier, 213 Ill. 520; Evans v. Price, 118 Ill. 599.

Gift of Personalty.

The term is often used in referring to a gift of personal property. Wilson v. Wilson, 261 Ill. 178.

When Technical Meaning Disregarded.

In construing wills, the term will be construed as intended by the testator, without regard to its strict technical meaning. Wilson v. Wilson, 261 Ill. 178.

DEVISE BY IMPLICATION.

While a devise by implication cannot rest upon conjecture, it is not required that the inference should be absolutely irresistible, if enough of the circumstances, taken together, leave no doubt as to the intention of the testator. Eyer v. Williamson, 256 Ill. 544; Connor v. Gardner, 230 Ill. 268.

Where a will recites that the testator has devised something in another part of the will when in fact he has not done so, such recital will be construed to show a purpose and intention to devise by the will, and the courts will give the recital the effect of a devise by implication, but where the recital is to the effect that the testator has, by some other instrument given property to a certain person named in the recital, when he has not done so, such an erroneous recital will not have the effect of a devise by implication. Hunt v. Evans, 134 Ill. 501.

DEVISEE.

When the term "devisee" is used in reference to a bequest of personalty it will be construed "legatee." People v. Petrie, 191 Ill. 510.

DEXTANS.

(Lat.) In Roman law. A division of the as, consisting of ten unciae; tentwelfths, or five-sixths. 2 Bl. Comm. 462, note (m); Tayl. Civ. Law, 492.

DICA.

In old English law. A tally for accounts, by number of cuts (taillees), marks or notches. Cowell.

DICTATOR.

In Roman law. A magistrate at Rome invested with absolute power. His authority over the lives and fortunes of the citizens was without bounds. His office continued but for six months. Hist. de la Jur. Dig. 1. 2. 18. 1. 1. 1.

DICTUM DE KENILWORTH.

The edict or declaration of Kenilworth. An edict or award between King Henry III. and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth Castle, in Warwickshire, in the fifty-first year of his reign, containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. Blount; 2 Reeve, Hist. Eng. Law, 62; Hale, Hist. Com. Law, 10, and note.

DIE LEAVING NO HEIRS.

Where a will devised property to a son, with a gift over in case the son should "die leaving no heirs," the gift over will take effect upon the death of the first taker without leaving children at any time, whether before or after the death of the testator, unless the devise over is controlled by other provisions of the will. Bradsby v. Wallace, 202 Ill. 247.

A will devising property to a son with a gift over in case the son should "die leaving no heirs" is to be construed as meaning, by the quoted expression, leaving no children, the word being used in its popular and not in its technical sense, since one cannot die leaving no "heirs" in a legal sense. Bradsby v. Wallace, 202 Ill. 244.

DIE LEAVING NO HEIRS OF HER OWN.

A will devising property to a daughter with a devise over in case she should

"die leaving no heirs of her own," evidently refers, by the quoted expression, to children. Ahlfield v. Curtis, 229 Ill. 142.

DIE LEAVING NO ISSUE SURVIVING.

Where a will devised property to a trustee for the benefit of two children with a gift over in case either should "die leaving no issue surviving" them, the quoted expression is to be construed as referring to the death of either of the cestuis que trustent prior to the death of the testator, the rule being that where property is devised to one person and in case of his death to another, if the primary devisee survives the testator he takes the estate absolutely, the courts favoring a construction giving estates of inheritance to the first devisee in fee. Kohtz v. Eldred, 208 Ill. 67.

DIE SEIZED.

A will devising to a widow "all the real estate that I may die seized of" passes real estate acquired after the will was executed and not described in the will, although the will also contained the clause "being the land I now live on," etc., as descriptive of the land intended to be devised. Cummings v. Lohr, 246 Ill. 580.

DIE WITHOUT CHILDREN.

A devise to one for life with remainder over in case the devisee shall "die without children" is not sufficient of itself, where the devisee leaves children surviving him, to create a gift by implication to such children, and such an implication can only arise when supported by some other material appearing in the will raising such implication. Bond v. Moore, 236 Ill. 588.

A will devising property to one with remainder over in case the devisee shall "die without children" means "die without having had children." Carter, J., dissenting opinion. Bond v. Moore, 236 Ill. 595.

DIE WITHOUT HEIRS.

Where a mother devised property to a daughter whose only heirs at law when the will was made were sisters of testatrix, and provided that if the devisee should "die without heirs" the property devised should go to the sisters, the word "heirs" is to be construed "children," and not heirs generally, since it could not have been the intention of the testatrix that her sisters should take in the event of the death of her daughter leaving them as her heirs. Smith v. Kimbell, 153 Ill. 374.

DIE WITHOUT HEIRS OF HIS BODY.

A devise to one with remainder over in case the devisee should "die without heirs of his body" means a death without leaving such heirs of body as the estate would have vested in, in fee, instantly on the death of the first taker, as children, etc. Summers v. Smith, 127 Ill. 651.

DIE WITHOUT ISSUE.

Primary Meaning.

The primary and most usual meaning of the phrase "die without issue," used in a will, is "die without issue either before or after the testator's death." Spencer v. Spencer, 268 Ill. 340; Fifer v. Allen, 228 Ill. 513.

No Technical Meaning.

The expression "die without issue," when used in a will, has not in this country been given a technical, judicial meaning. Stafford v. Read, 244 Ill. 144.

Importing Failure of Issue.

Where a testator in one place in his will disposes of his property in case his children died leaving children, and in another place in the same clause makes a disposition in case they die "without issue," the quoted expression is to be construed to mean "without children," and as importing a definite failure of issue. O'Hare v. Johnston, 273 Ill. 476.

The expression "die without issue," and similar expressions, when used in a will, will be construed to import general failure of issue at any time, however indefinite or remote, unless there are explanatory words defining the time to which the contingency is to apply. Strain v. Sweeny, 163 Ill. 606; Smith v. Kimbell, 153 Ill. 374.

If such appears to be the intention of the testator, the expression "die without issue" may be construed to mean that the limitation over to take effect only in case the first taker died without issue surviving him. Stafford v. Read, 244 Ill. 145.

Since the rule that the expression "die without issue," and similar expressions, when used in a will, are to be construed as importing an indefinite failure of issue, unless a contrary intention appears from the will, is exceedingly arbitrary and without much foundation in reason or common sense, the courts will seize on slight circumstances to construe executory devises limited by such expressions so as to import a definite failure of issue. Strain v. Sweeny, 163 Ill. 607. To the same effect see Smith v. Kimbell, 153 Ill. 374.

Construction of Devise.

A will devising property to three sons, with a gift over in case all three shall "die without issue," providing that and in case of the death of either son the deceased's son's share shall pass to his surviving brothers, creates a base or determinable fee in the first takers and makes an executory devise to the donees over, so that after the death without children of two of the first takers, the survivor holds a base or determinable fee in the property, subject to be divested by his death without children. Gannon v. Peterson, 193 Ill. 380.

The expression "die without issue" may be shown by the context to refer to the death of the first taker in the lifetime of the testator. Spencer v. Spencer, 268 Ill. 340.

In case of a gift in case the first taker "die without issue," the context may show that the testator intended that the

quoted expression should mean that if the first taker dies in the lifetime of the testator, the second taker may stand in his place to prevent a lapse. Spencer v. Spencer, 268 Ill. 340; Fifer v. Allen, 228 Ill. 513.

Means Without Having Had Issue.

A devise to one with remainder over in case the first taker shall "die without issue" means die without having had issue, unless the context shows a different intention. Winchell v. Winchell, 259 Ill. 475; Kendall v. Taylor, 245 Ill. 619; Carter J., dissenting opinion; Bond v. Moore, 236 Ill. 595; King v. King, 215 Ill. 110; Field v. Peoples, 180 Ill. 380; Voris v. Sloan, 68 Ill. 593.

Where a will devises property to a grandson with a limitation over in case the devisee shall "die without issue," the quoted expression is to be construed as meaning without having had issue, and not without issue surviving, where it appears from the will that the intention of the testator was to provide for the grandson and his children, without contemplating or attempting to provide for the contingency of the death of children born to him before his death. Stafford v. Read, 244 Ill. 146.

As Meaning Children.

Where a will devises property to three sons, with a gift over in case all three should "die without issue," the quoted expression is to be construed as meaning die without children where the will uses the words "heirs," "issue," and "children" indiscriminately, the court in such case being warranted in giving the word "issue" its common and popular meaning. Gannon v. Peterson, 193 Ill. 379.

DIE WITHOUT LEAVING LEGAL HEIRS.

An absolute devise to two remainder men is not rendered contingent by the fact that the testator attached to the gift a condition subsequent to the effect that if either should "die without leaving legal heirs" the estate devised should be inherited by the survivor, since the only effect of the condition is to divest the remainder as to one, in case the condition happened, and to displace the prior fee given to such remainder man and to substitute another. Hinrichsen v. Hinrichsen, 172 Ill. 465.

DIES A QUO.

(Lat.) In civil law. The day from which a transaction begins, the conclusion being the dies ad quem. Calv. Lex.; 1 Kaufm. Mackeld. Civ. Law, 168.

DIES NON JURIDICUS.

A day upon which courts could not transact other than necessary or ministerial business. Eden v. People, 161 Ill. 300.

At common law Sunday is "dies non juridicus." Eden v. People, 161 Ill. 300; Rasmussen v. People, 155 Ill. 72; McChesney v. People, 145 Ill. 619; Kingsbury v. Buckner, 70 Ill. 519; Langabier v. Fairbury P. & N. W. R. Co., 64 Ill. 246; Burton v. Chicago, 53 Ill. 88; Scammon v. Chicago, 40 Ill. 148.

DIES SOLARIS.

In old English law. A solar day, as distinguished from what was called "dies lunaris" (a lunar day), both composing an artificial day. Bracton, fol. 264.

DIETA.

(Lat.) A day's journey; a day's work; a day's expenses. A reasonable day's journey is said to be twenty miles, by an old computation. Cowell; Spelman; Bracton, 325b; 3 Bl. Comm. 218.

DIETING.

The word "dieting," used in section 19 of the Fees and Salaries Act (J. & A. ¶ 5662), providing for the compensation of the sheriff for the support of prisoners confined in jail, refers to the duty of providing and furnishing to prisoners their daily food, and does not include convey-

ing or serving the food to the prisoners. Cook County v. Gilbert, 146 Ill. 273.

· DIFFICULTY.

Where a prosecution involves a breach of the peace or a more flagrant offense, an instruction speaking of what took place between the parties as a "difficulty" is not objectionable, the word, as so used, being in general use and well understood, and of constant application in judicial proceedings and reports of adjudicated cases, as expressive of a group or collection of ideas which cannot be so well imparted by another term, and the use of which avoids confusion and circumlocution. Gainey v. People, 97 Ill. 279.

DIGAMA, OR DIGAMY.

Second marriage; marriage to a second wife after the death of the first, as "bigamy," in law, is having two wives at once. Originally, a man who married a widow, or married again after the death of his wife, was said to be guilty of bigamy. Co. Litt. 40b, note.

DIGEST.

A compilation arranged in an orderly manner.

The name is given to a great variety of topical compilations, abridgments, and analytical indices of reports, statutes, etc. When reference is made to "Digest," the Pandects of Justinian are intended, they being the authoritative compilation of the civil law. As to this Digest, and the mode of citing it, see "Pandects." Other digests are referred to by their distinctive names. For some account of digests of the civil and canon law, and those of Indian law, see "Civil Law," "Code," and "Canon Law."

The digests of English and American law are for the most part deemed not authorities, but simply manuals of reference, by which the reader may find his way to the original cases which are authorities. 1 Burrows, 364; 2 Wils. 1, 2. Some of them, however, which have been

the careful work of scholarly lawyers, possess an independent value as original repositories of the law. Bacon's Abridgment, which has long been deservedly popular in this country, and Comyn's Digest, also often cited, are examples of these.

DIGGING OUT THE TAPPING HOLE.

A process by which the loam, dolomite and magnesite which accumulate in the channel or tapping hole is dug out when molten metal or liquid is to be drawn from the furnace in order to open a passage through which the molten metal may escape. Illinois, etc., Co. v. Coffey, 205 Ill. 208.

DILIGENCE.

The word "diligence," as used in definitions of negligence, is synonymous with "care." Chicago, B. & Q. R. Co. v. Johnson, 103 Ill. 523.

Diligence Against the Heritage.

A writ of execution by which the creditor proceeds against the real estate of the debtor.

Diligence Incident.

A writ or process for citing witnesses and examining havers. It is equivalent to the English subpoena for witnesses, and rule or order for examination of parties and for interrogatories.

Diligence to Examine Havers.

A process to obtain testimony, equivalent to a bill of discovery in chancery, or a rule to compel oral examination and a subpoena duces tecum at common law.

Diligence Against the Person.

A writ of execution, by which the creditor proceeds against the person of the debtor; equivalent to the English ca. 88.

Second Diligence.

Second letters issued where the first

is produced in English practice by the attachment for contempt.

Summary Diligence.

Diligence issued in a summary manner, like an execution of a warrant of attorney, cognovit actionem, and the like, in English practice.

Diligence Against Witnesses.

Process to compel the attendance of witnesses; equivalent to the English subpoena. See Paterson, Comp.

DILIGENT INQUIRY.

The expression "diligent inquiry," used in section 216 of the Revenue Act (J. & A. ¶9435), relating to the notice to be served on the owner of land sold for taxes, means what the ordinary person would understand it to mean, and what a business man or anyone else actually seeking to find a person residing at a given place would understand them to mean if he sent an employee to find and serve personal notice on such person, and is not satisfied by an inquiry made at the house only on Saturday, when the owner was not in. Wright v. Glos, 264 Ill. 265.

The expression "diligent inquiry." used in section 216 of the Revenue Act (J. & A. ¶9435), relating to the notice to be served on the owner of land sold for taxes, means such inquiry as a diligent man, intent upon ascertaining a fact, would usually and ordinarily make, -inquiry with diligence and in good faith to ascertain the truth. Van Matre v. Sankey, 148 Ill. 562.

DINARCHY.

A government by two persons.

DIOCESAN COURTS.

Ecclesiastical courts taking cognizance of all matters arising within the diocese of each bishop. They consist of the consistorial court, and the courts of archdeacons, exercising general or limited jurisdictions, according to the terms of have been disregarded. A similar result | their patents, or to local custom, or to the authority of recent legislation. Phillim. Ecc. Law, 1202.

DIPSOMANIA.

In medical jurisprudence. A disease produced by drunkenness, and, indeed, other causes, which overmasters the will of its victim, and irresistibly impels him to drink to intoxication. 1 Bish. Crim. Law, § 304. How far the law will hold a party responsible for acts committed while the mind is overwhelmed by the effects of liquor so taken is an open question.

DIPTYCHA.

Diptychs; tablets of wood, metal, or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman, church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. Hubback, Ev. Success. 567; Enc. Am. See Calv. Lex.; Brissonius.

DIRECT.

In an action for personal injuries, it is not error to instruct the jury to assess damages sustained by plaintiff as the "direct" result of the defendant's negligence, although the expression more commonly used in such a connection is "natural and proximate," which may be said to be more appropriate, the two expressions being often used as synonymous in such cases. Lovett v. Chicago, 35 Ill. App. 571.

DIRECT ANNUAL TAX.

Section 12 of article 9 of the Constitution of 1870, requiring municipal corporations to provide for "a direct annual tax" to pay the interest on indebtedness incurred does not require the imposition of a tax once for all, but is complied with if such a tax is levied annually. Pettibone v. West Chicago, etc., Commissioners, 215 Ill. 317.

DIRECT ATTACK.

An attempt to set aside or correct a judgment in some manner provided by law. Magnusson v. Cronholm, 51 Ill. App. 476.

DIRECT CONTEMPT.

Defined.

Those which are committed within the presence of the court while in session, or so near to the court as to interrupt its proceedings. Dahnke v. People, 168 Ill. 106; Holbrook v. Ford, 153 Ill. 647; People v. Seymour, 191 Ill. App. 390.

Such as are offered to the court while sitting as such, and in its presence. Stuart v. People, 4 Ill. 404; O'Neil v. People, 113 Ill. App. 193; Kyle v. People, 72 Ill. App. 177; Garnett, P. J., concurring opinion Welch v. People, 30 Ill. App. 412.

Such as are offered in the presence of the court, sitting judicially. Thornton, J., concurring opinion People v. Wilson, 64 Ill. 225.

The doing of any improper act in the presence of the court while in session, tending to directly disturb the proceedings or to defeat, obstruct or impair the administration of justice or the refusal to do any proper act required to be done in open court, in the presence of the court, where such refusal directly tends to disturb the proceedings or to defeat, obstruct or impair the administration of justice. Ferriman v. People, 128 Ill. App. 234.

Conduct, in the presence of the court, which is calculated to impede, embarrass or obstruct the court in the administration of justice, or which tends to bring the authority and administration of the law into disrespect or disregard, constitutes a direct contempt. People v. Gard, 175 Ill. App. 492.

Blackstone's Definition.

of a tax once for all, but is complied with different such a tax is levied annually. Petti-leviel openly insult or resist the power of the

courts, or the persons of the judges who preside there. Kyle v. People, 72 Ill. App. 176.

DIRECT INTEREST.

The expression "direct interest," used in the third exception under section 2 of the Evidence Act (J. & A. ¶ 5519), relating to the competency of witnesses in suits against trustees, etc., had at the time the statute was enacted, a well known meaning in the law of evidence, and must be presumed to have been used with that meaning, the rule being that where the event of the suit, if adverse to the party adducing the witness, would render the latter liable either to a third party or to the party himself, such witness had a "direct interest" within the meaning of the statute, whether such liability was founded on an express or implied contract to indemnify. Butz v. Schwartz, 135 Ill. 188; Off v. Trapp, 109 Ill. App. 50.

DIRECTLY INTERESTED.

In a bill for foreclosure of a mortgage, where a judgment creditor claimed a priority over a junior mortgagee, who alleged that a person claiming to be the attorney of the judgment creditor has released the lien of the judgment for a consideration in money, the attorney is "directly interested" in the litigation within the meaning of section 2 of the Evidence Act (J. & A. ¶ 5519), relating to the competency of certain witnesses in suits against trustees, etc., and hence incompetent as a witness to prove that such attorney had authority to act for the judgment creditor, since in case such attorney had no authority to act, he would be directly liable to the junior mortgage for the amount paid. Off v. Trapp, 109 Ill. App. 50.

DIRECT TAX.

A tax that is assessed upon the property, person, business, income, etc., of those who are to pay it. Magruder, J., dissenting opinion Wilson v. Board of Trustees, 133 Ill. 493.

DIRECTION.

The act of governing, ordering, or ruling. Paietta v. Illinois, etc., Co., 257 Ill. 15; Kellyville, etc., Co. v. Brusas, 223 Ill. 600.

DIRECTORY.

When a statute directs certain proceedings to be done in a certain way or at a certain time, and the form or the period does not appear essential to the judicial mind, the law will be regarded as directory, the time and manner not being of the essence of the thing to be done. Kinney v. People, 52 Ill. App. 360.

Where a statute specifies the time within which a public officer is to perform an official act regarding the rights and duties of others, it will be considered as directory, unless the nature of the act or the language used show that the designation of time was intended as a limitation of the power of the officer. Whalin v. Macomb, 76 Ill. 52; Kinney v. People, 52 Ill. App. 360.

By a "directory statute" is not to be understood that no duty is imposed to do the act at the time specified, in the absence of a satisfactory reason for not then doing it, but simply that the act is valid if done afterwards. Webster v. French, 12 Ill. 306.

DISABILITY.

The want of legal capacity.

"Disability implies want of power, not want of inclination. It refers to incapacity, and not to disinclination." 32 Barb. (N. Y.) 473.

Disabilities were anciently classified as general and special.

- (1) A disability is called general when it disables a person from performing all acts of a given kind, as in the case of an outlaw.
- (2) A disability is special when it disables him from doing a specific act, as where one renders himself incapable of performing a contract which he has entered into.

They are also classified as personal and absolute.

- (3) A personal disability is confined to the person affected.
- (4) An absolute disability descends to his heirs. The absolute disabilities such as attainder have been all abolished.

They are also classified as civil and canonical.

This classification existed only as to disability to enter the marriage contract. Civil were such as to render the marriage void, as prior marriage, consanguinity, etc., while a canonical disability, such as sterility, rendered the marriage voidable only. 2 Steph. Comm. 240.

DISABLING STATUTES.

The acts of 1 Eliz. c. 19, 13 Eliz. c. 10, 14 Eliz. cc. 11, 14, 18 Eliz. c. 11, and 43 Eliz. c. 29, by which the power of ecclesiastical or eleemosynary corporations to lease their lands was restricted. 2 Bl. Comm. 319, 321; Co. Litt. 44a; 3 Steph. Comm. 140. Also called the "Restraining Statutes."

DISCHARGE.

To free from a charge or load; to remove; to satisfy or pay; to set free, dismiss, or absolve; to carry on or perform. The term has many applications, the principal being:

Of Cargo.

The unloading of a cargo from a ship. 5 Wall. (U. S.) 557.

Of Debt or Obligation.

Full and final release from and termination of the obligation in whatever manner; a receipt or other instrument acting as a discharge. 147 Mass. 585.

Of Prisoner.

The setting at liberty of one held in confinement under process of law. 68 Mich. 331.

DISCLAIMER.

A disavowal; a renunciation; as, for example, the act by which a patentee renounces part of his title of invention.

Of Estates.

The act by which a party refuses to accept an estate which has been conveyed to him. Thus, a trustee is said to disclaim who releases to his fellow trustees his estate, and relieves himself of the trust. 1 Hilliard, Real Prop. 354.

Of Tenancy.

The act of a person in possession, who denies holding the estate of the person who claims to be the owner. 2 Nev. & M. 672. An affirmation, by pleading or otherwise, in a court of record, that the reversion is in a stranger. It works a forfeiture of the lease at common law (Co. Litt. 251; 1 Cruise, Dig. 109), but not, it is said, in the United States (1 Washb. Real Prop. 93.) Equity, it is said, will not aid a tenant in denying his landlord's title. 1 Pet. (U. S.) 486.

In Pleading.

A renunciation by the defendant of all claim to the subject of the demand made by the plaintiff's bill. Cooper, Eq. Pl. 309; Mitf. Eq. Pl. (Jeremy Ed.) 318.

DISCONTINUANCE.

Of Estates.

An alienation made or suffered by the tenant in tail, or other tenant seised in autre droit, by which the issue in tail, or heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter.

The term "discontinuance" is used to distinguish those cases where the party whose freehold is ousted can restore it only by action, from those in which he may restore it by entry. Co. Litt. 325a; 3 Bl. Comm. 171; Adams, Ej. 35-41; Comyn, Dig.; Bac. Abr.; Viner, Abr; Cruise, Dig. Index; 2 Saund. Index.

In Pleading.

The chasm or interruption which occurs when no answer is given to some material matter in the preceding pleading, and the opposite party neglects to take advantage of such omission. See Comyn, Dig. "Pleader" (W); Bac. Abr. "Pleas" (P). It is distinguished from in-

sufficient pleading by the fact that the pleading does not profess to answer all the preceding pleading in a case of discontinuance. 1 Wm. Saund. 28, note.

- In Practice.

The chasm or interruption in proceedings occasioned by the failure of the plaintiff to continue the suit regularly from time to time, as he ought. 3 Bl. Comm. 296.

DISCOUNT.

The difference between the price and the amount of the debt, the evidence of which is transferred; a deduction or drawback made upon advances or loans of money upon negotiable paper or other evidences of debt, payable at a future day, which are transferred to the bank. First, etc., Bank v. Sherburne, 14 Ill. App. 570.

Where an agreement provides for the underwriting of shares at a "discount" of a certain per cent., the word "discount" is to be construed as equivalent to the term "commission." 1 Fletcher Cyclopedia Corporations 960.

DISCOUNTING.

A statute of New Jersey providing that no corporation organized under the general incorporation act of that state shall have powers of, inter alia, "discounting" bills, notes, etc., is not violated by the purchase by such a corporation from the receiver of an Illinois corporation of the assets of such corporation, the notes having been transferred by delivery, the receiver assuming no liability thereon. Clark v. Assets, etc., Co., 115 Ill. App. 152.

DISCOVERY.

(Fr. decouvrir, to uncover; to discover.) The act of finding an unknown country.

The nations of Europe adopted the principle that the discovery of any part of America gave title to the government by whose subjects or by whose authority

it was made, as against all European governments. This title was to be consummated by possession. 8 Wheat. (U. S.) 543; 16 Pet. (U. S.) 367; 2 Washb. Real Prop. 518.

DISCRETION.

Ordinary Meaning.

Unrestrained choice or will. Pate v. Gus Blair, etc., Co., 158 Ill. App. 585.

As Exercise of Judgment.

Discretion is not the exercise of the will but of the judgment, when applied to a question capable of being determined in different ways. Webster v. French, 11 Ill. 272.

Of Court or Officer.

The discretion vested in courts and public officers in certain cases is not an arbitrary discretion—governed by fancy, caprice or prejudice, but a sound discretion, guided by law, legal and regular. Harrison v. People, 101 Ill. App. 227; Swift v. People, 63 Ill. App. 459.

DISEASE.

A question in an application for life insurance "have you had any of the following diseases" uses the word "diseases" as meaning more than a temporary disorder, and as meaning serious illness which has impaired the constitution or has left behind it some organic or chronic effect, the object being to find out whether the applicant's history showed anything affecting the risk, tending to prevent the insurance of applicant, that is, something serious enough to impair the general health and affect the continuance of life. Illinois, etc., Co. v. Lindley, 110 Ill. App. 163.

DISGAVEL.

In English law. To deprive lands of that principal quality of gavelkind tenure by which they descend equally among all the sons of the tenant. 2 Wooddeson, Lect. 76; 2 Bl. Comm. 85; Robinson, Gavelkind, 97, note.

DISHONESTY.

A bond prepared by a surety company guaranteeing an employer against loss by reason of the "dishonesty or fraud, amounting to larceny or embezzlement," of an employee, is a guaranty against any financial loss sustained by reason of the dishonesty of the employee, whether such as would render him liable to indictment for larceny or embezzlement or not, the clause "amounting," etc., qualifying only the last antecedent. City, etc., Co. v. Lee, 204 Ill. 71.

DISJUNCTIVE ALLEGATIONS.

In pleading. Allegations which charge a party disjunctively, so as to leave it uncertain what is relied on as the accusation against him.

An indictment, information, or complaint which charges the defendant with one or other of two offenses, in the disjunctive, as that he murdered "or" caused to be murdered, forged "or" caused to be forged, wrote and published "or" caused to be written and published, is bad for uncertainty. 8 Mod. 330; 1 Salk. 342, 371; 2 Strange, 900; Cas. temp. Hardw. 370; 5 Barn. & C. 251; 1 Car. & K. 243; 1 Younge & J. 22.

DISJUNCTIVE TERM.

One which is placed between two contraries, by the affirming of one of which the other is taken away. It is usually expressed by the word "or." See 3 Ves. 450; 7 Ves. 454; 2 Rop. Leg. 290; 1 P. Wms. 433; 2 P. Wms. 283; 2 Cox, Ch. 213; 2 Atk. 643; 3 Atk. 83, 85; 2 Ves. Sr. 67; 2 Strange, 1175; Cro. Eliz. 525; Poll. 645; 1 Bing. 500; 3 Term R. 470; Ayliffe, Pand. 56; 2 Miles (Pa.) 49.

In the civil law, when a legacy is given to Caius "or" Titius, the word "or" is considered "and," and both Caius and Titius are entitled to the legacy in equal parts. 6 Toullier, Dr. Civ. note 704.

DISPONE.

In Scotch law. A technical word essential to the conveyance of heritable prop- | old English law. To prove; to deraign;

erty, and for which no equivalent is accepted, however clear may be the meaning of the party. Paterson, Comp.

DISPOSE OF.

A will devising land with power to the devisee to "dispose of" the land passes an estate in fee simple to the devisee, such a power amounting to an absolute gift of the land devised. Dalrymple v. Leach, 192 Ill. 56; Lambe v. Drayton, 182 Ill. 116; Wilson v. Turner, 164 Ill. 407; Wolfer v. Hemmer, 144 Ill. 561; Funk v. Eggleston, 92 Ill. 533; Fairman v. Beal, 14 Ill. 245.

DISPOSING MIND.

The mental capacity to know and understand what disposition he may wish to make of his property, and upon whom he will bestow his bounty. Freeman v. Easly, 117 Ill. 321.

DISPOSITION OF MY ESTATE.

The words "disposition of my estate," used in a will, indicate a purpose to dispose of all the testator's estate, and not a part of it. Connor v. Gardner, 230 Ill. 267.

DISPOSITIVE FACTS.

Such as originate, transfer, or extinguish rights, known respectively as investitive, translative, and divestitive facts. These terms were coined by Bentham, and have not found their way into general use. Holland, Jur. 131.

DISPOSSESSION.

Ouster; a wrong that carries with it the amotion of possession. An act whereby the wrongdoer gets the actual occupation of the land or hereditament. It includes abatement, intrusion, disseisin, discontinuance, deforcement. 3 Sharswood, Bl. Comm. 167.

DISRATIONARE.

(Law Lat.; Law Fr. desreigner.)

to establish or make good a claim, charge, or accusation. Bracton, fol. 138. Spelman considers this as merely another form of dirationare, and makes its proper signification to be to disprove or refute, from dis, priv, and ratiocinari, to prove. It is, however, never employed in this sense by Bracton, who uses it frequently, but only in the sense first given. Bracton, fol. 138. See Id. fols. 101b, 119, 372b, 373b; Fleta, lib. 1, c. 31, § 6; Id. lib. 1, c. 21, § 2.

DISSEIZIN.

An actual, visible and exclusive appropriation of land, commenced and continued under a claim of right. Winters v. Haines, 84 Ill. 589.

To constitute a disseizin by a co-tenant there must be outward acts of exclusive ownership, of an unequivocal character, overt and notorious, and of such a nature as, by their own import, to impart information and give notice to the co-tenants that an adverse possession and an actual disseizin are intended to be asserted against them. Long v. Morrison, 251 Ill. 149; Carpenter v. Fletcher, 239 Ill. 445; Ball v. Palmer, 81 Ill. 372; Busch v. Huston, 75 Ill. 347.

DISTINGUISHING MARK.

Defined.

A mark placed upon the ballot by the voter by which his ballot can be identified. Slenker v. Engel, 250 Ill. 505.

Such a mark as will distinguish and separate the particular ballot from other ballots cast at the election—a mark put upon the ballot to indicate who cast it and to evade its secrecy. Brents v. Smith, 250 Ill. 528; Kerr v. Flewelling, 235 Ill. 331; Winn v. Blackman, 229 Ill. 212; Rexroth v. Schein, 206 Ill. 100; Pierce v. People, 197 Ill. 436.

A mark or character which, although indicating an intention to vote in a particular way, at the same time serves the purpose of indicating who voted it, thereby furnishing the means of evading the law as to secrecy, is a "distinguishing mark," which will vitiate the ballot.

Kerr v. Flewelling, 235 Ill. 330; Parker v. Orr, 158 Ill. 617.

Any one of an infinite variety of marks may constitute a "distinguishing mark," within the meaning of the rule that such marks invalidate a ballot, if it appear that such marks were for the purpose of identifying the ballot cast. Hodgson v. Knoblauch, 268 Ill. 318.

Not Every Mark Included.

It is not every mark or blot which may be placed on a ballot by the voter which constitutes a "distinguishing mark," which will vitiate it. Bell v. Clawson, 261 Ill. 154; Kerr v. Flewelling, 235 Ili. 331; Winn v. Blackman, 229 Ill. 212.

Intent to Identify Ballot Essential.

In order to warrant the rejection of a ballot because of a "distinguishing mark," the court should be able to say that such mark was placed there by the voter for the purpose of distinguishing his ballot from others. Winn v. Blackman, 229 Ill. 212.

Mark Made by Mistake.

A mark on a ballot is not to be regarded as a "distinguishing mark," which would invalidate his ballot, where it appears that the mark was placed on the ballot through mistake, inadvertence, or because the voter changed his mind as to the method he intended to follow in marking his ballot. Bell v. Clawson, 261 Ill. 153; Winn v. Blackman, 229 Ill. 210.

Mark Made with Honest Purpose.

If a mark appearing on a ballot is reasonably connected with an effort of the voter to cast his ballot, and can be reasonably explained, consistently with an honest purpose on his part, the mark is not such a "distinguishing mark" such as will vitiate his ballot. Hodgson v. Knoblauch, 268 Ill. 318; Grubb v. Turner, 259 Ill. 442; Kerr v. Flewelling, 235 Ill. 331; Winn v. Blackman, 229 Ill. 210; Rexroth v. Schein, 206 Ill. 100.

Determinable from Inspection of Ballot.

Generally the question whether a mark appearing on a ballot is a "distinguish-

ing mark," such as will vitiate the ballot, is to be determined from the evidence disclosed by an inspection of the ballot. Hodgson v. Knoblauch, 268 Ill. 318; Kerr v. Flewelling, 285 Ill. 332; Winn v. Blackman, 229 Ill. 212.

May Appear on Face or Back of Ballot.

The "distinguishing mark," which will vitiate a ballot, may appear either on the face or back of the ballot. Winn v. Blackman, 229 Ill. 207.

Writing in Names.

Writing in the name of a candidate in a blank space in a ballot and voting such candidate does not constitute a "distinguishing mark," which will vitiate the ballot, although such name is printed elsewhere on the ballot as a candidate for the same office. Arnold v. Keil, 252 Ill. 344; Winn v. Blackman, 229 Ill. 216; Smith v. Reid, 223 Ill. 495; Rexroth v. Schein, 206 Ill. 105.

The names of candidates written on the back of the ballot, with a cross opposite the official signature of the county clerk, who is running for re-election, constitute "distinguishing marks," which will vitiate the ballot. Brents v. Smith, 250 Ill. 531.

Writing a name on a ballot without designating the office for which the voter desires to vote for the person named does not constitute a "distinguishing mark," which will vitiate the ballot, where other ballots show a common understanding among members of a party to vote for such person for an office, it appearing thereby that the writing of such a name on the ballot was an attempt to vote for such person. Winn v. Blackman, 229 Ill. 217. To a similar effect see Rexroth v. Schein, 206 Ill. 100.

The name of a person not on the ballot or voted for for any office, written by the voter on his ballot, constitutes a "distinguishing mark," which will vitiate the ballot. Caldwell v. McElvain, 184 Ill. 559.

Name of Voter.

The name of the voter written on the back of the ballot constitutes a "dis-

tinguishing mark," which will vitiate the ballot. Caldwell v. McElvain, 184 Ill. 559; Parker v. Orr, 158 Ill. 617.

Names Extending Beyond Line.

Where a ballot shows dotted lines for voters to write in the names of candidates, the surname of such a candidate written in so that it extends beyond the dotted line is not a "distinguishing mark," which will vitiate the ballot. Rexroth v. Schein, 206 Ill. 101.

Initials in Blank Space.

Where the ballot showed the words "for constable," and under it a dotted line with a square opposite, the initials "H. A.," written by a voter on the dotted line, is not to be regarded as a "distinguishing mark," which will invalidate the ballot, but as the initials of some person for whom the voter intended to vote, but changed his mind, or by an oversight did not complete the name. Rexroth v. Schein, 206 Ill. 101.

Marks Not Made by Voter.

A double circle on a ballot, caused by imperfect machinery or poor work in printing, does not constitute a "distinguishing mark," which will vitiate the ballot. Kerr v. Flewelling, 285 Ill. 336.

Marks appearing on a ballot not made by the voter, such as tally marks made at the paper house before the ballots were delivered to the city clerk, are not "distinguishing marks," which will vitiate the ballot. Kerr v. Flewelling, 235 Ill. 335.

The figure "25" appearing on a ballot to the left of the square opposite the name of a candidate does not constitute a "distinguishing mark," which will vitiate the ballot, where there is evidence tending to show that the mark was made by some other person than the voter, probably by one of the election officers during the counting of the ballot, and where the mark is in a different pencil from those on the face of the ballot. Slenker v. Engel, 250 Ill. 506.

Marks by Election Officers.

A mark placed on the ballot by election officers, either before or after the ballot is voted, is not a "distinguishing mark," within the meaning of the rule requiring ballots having such marks to be excluded from the count. Slenker v. Engel, 250 Ill. 505; Kerr v. Flewelling, 235 Ill. 337; Gill v. Shurtleff, 183 Ill. 442.

Erasures.

Erasures by pencil or otherwise are not "distinguishing marks," which will vitiate a ballot. Arnold v. Keil, 252 Ill. 345; Brents v. Smith, 250 Ill. 532; Slenker v. Engel, 250 Ill. 505; Kerr v. Flewelling, 235 Ill. 335; Winn v. Blackman, 229 Ill. 216; Rexroth v. Schein, 206 Ill. 103; Parker v. Orr, 158 Ill. 618.

Lines Erasing Whole Ticket.

Diagonal lines in the form of crosses, or straight horizontal lines, which erase the names of all other candidates than those voted for are "distinguishing marks," which will vitiate the ballot. Kerr v. Flewelling, 235 Ill. 338; Perkins v. Bertrand, 192 Ill. 65; Kelly v. Adams, 183 Ill. 196; Apple v. Barcroft, 158 Ill. 651.

Diagonal lines in the form of a cross, used on a ballot to erase a whole party ticket, is a "distinguishing mark," which will vitiate the ballot, although other tickets on the same ballot are unmarked in any way. Kerr v. Flewelling, 235 Ill. 339.

Figures.

A figure "3," following the name of a candidate on the ballot is not a "distinguishing mark," which will vitiate the ballot, where the voter has reason for thinking he can cumulate his vote. Slenker v. Engel, 250 Ill. 509; Smith v. Reid, 223 Ill. 496. But see Hodgson v. Knoblauch, 268 Ill. 320, holding that it is otherwise where the voter has no such reason.

Letters.

A small letter "t" appearing near the bottom of a ballot, to the right of the center, and bearing evidence of having been carefully placed near an ink blot is properly regarded as a "distinguishing mark," which will vitiate the ballot, although it is not clear that it was so intended, since such a mark might easily be a "distinguishing mark." Winn v. Blackman, 229 Ill. 215.

Where on the back of a ballot the initials "W. M. C." appear, the letters do not constitute a "distinguishing mark," which will vitiate the ballot, although there is no judge of election having such initials, it appearing that there was a judge whose initials were "W. M.," and that all the letters were made with the same sort of pencil, and evidently by the same person. Slenker v. Engel, 250 Ill. 608.

The letter "D," marked on the back of a ballot after the initials of one of the judges, and in a different kind of pencil than that used in marking the face of the ballot, is a "distinguishing mark," which will vitiate the ballot. Brents v. Smith, 250 Ill. 531. To a similar effect see Winn v. Blackman, 229 Ill. 217, where the mark on the back of the ballot was in the form of a "V."

Words.

Where an election involved a vote on a constitutional amendment, and the ballot showed a square opposite the word "yes," printed on the ballot, the word "get," written in the square, is not a "distinguishing mark," which will vitiate the ballot. Parker v. Orr, 158 Ill. 618.

Writing the word "rejected" above the names of candidates which have been erased by pencil mark does not constitute a "distinguishing mark," which would vitiate the ballot. Kerr v. Flewelling, 235 Ill. 334.

The word "Jofe," written on the back of the ballot, is a distinguishing mark, where there is evidence that the word was not written by one of the election judges. Brents v. Smith, 250 Ill. 529.

Mark by Nervous Person.

A mark of this character: (v), appearing in a party circle, on a ballot, is not to be regarded as a "distinguishing mark," which will vitiate the ballot, but rather as being put on the ballot by a nervous person, so much so as to make

it difficult for such person to make a cross. Winn v. Blackman, 229 Ill. 211. To a similar effect see Rexroth v. Schein, 206 Ill. 104.

Hole Made in Erasing.

A hole in the ballot made by the voter in attempting to erase a mark does not "distinguishing constitute a mark," which will vitiate the ballot. Kerr v. Flewelling, 235 III. 336.

Check Mark in Circle.

A small check mark in a party circle is not a "distinguishing mark," which will vitiate the ballot, where a cross appeared in the circle of another party. Winn v. Blackman, 229 Ill. 218.

Hand Pointing to Name.

Where a voter makes a cross in a party circle, and a cross in the square opposite the name of a candidate of another party an index hand pointing to the name of such other candidate cannot be regarded as a distinguishing mark, it appearing that the intention of the voter was to call the attention of the judges to the fact that he voted for such candidate, and thereby prevent his ballot from being counted as a straight party ballot. Winn v. Blackman, 229 Ill. 219.

Imprint of Pencil Through Ballot.

The imprint of the pencil with which a voter marks his ballot and which appears on the back of the ballot is not a "distinguishing mark," which will vitiate the ballot, where it occurs through inadvertence and without the knowledge of the voter. Winn v. Blackman, 229 Ill. 207.

Extending Sides of Square.

The fact that a voter, after making a cross in the democratic circle, made a cross in the square opposite the name of a candidate, but partially erased it, making a hole in the paper, whereupon he extended the top and bottom lines of the square to the left, making three sides of a square, in which space he made a cross, does not constitute a "distinguishing appearing that the voter made an honest attempt to vote for the candidate. Hodgson v. Knoblauch, 268 Ill. 323.

Mark Like Barred Window in Square.

A mark made by a voter in the square opposite the name of a candidate, consisting of three vertical marks from the top to the bottom of the square, making the square look like a barred window, is a "distinguishing mark," which will vitiate the ballot, where no cross appears in the square, although the voter may have been attempting to cumulate his vote. Hodgson v. Knoblauch, 268 Ill. 319.

Semi-Circle Through Cross.

Where a voter makes a proper cross in a party circle, a semi-circle drawn through the cross, evidently a simple flourish with the pencil, is not to be regarded as a "distinguishing mark," which would vitiate the ballot, where there is not evidence that it is so intended. Winn v. Blackman, 229 Ill. 210.

Cross Extending Outside Circle.

A cross in a party circle composed of long and heavy lines extending outside the circle does not constitute a "distinguishing mark," which will vitiate the ballot. Kerr v. Flewelling, 235 Ill. 334.

Cross Outside Square.

A cross marked outside the square opposite the name of a candidate is not a "distinguishing mark," such as will vitiate the ballot, where it appears that the voter was attempting to vote for such candidate, the only effect of such mark being to vitiate the ballot as to such candidate. Hodgson v. Knoblauch, 268 Ill. 319.

Imperfect Cross.

A cross appearing in its proper place on the ballot is not to be regarded as a "distinguishing mark," which will vitiate it, merely because the arm of the cross does not consist of single lines, where there is no evidence of an attempt to distinguish the ballot by a mark of identimark," which will vitiate his ballot, it | fication. Kerr v. Flewelling, 235 Ill. 333.

Line Intersecting Cross.

Where a voter makes a cross in a party circle in the form of an X, a line drawn through such cross either horizontally or diagonally, is not to be regarded as a "distinguishing mark," which will vitiate the ballot, but as a mark placed by the voter on the ballot for greater certainty. Tandy v. Lavery, 194 Ill. 373.

Lines Intersecting Cross.

Where a voter makes a cross in a party circle, the fact that a straight line runs diagonally through the cross almost at the center, which is crossed by two lines running at right angles with the first, apparently made with a down stroke of the pencil, and an upward stroke almost parallel with the down stroke, making a figure similar to a long narrow "V," is not to be regarded as a "distinguishing mark," which would vitiate the ballot, it appearing that the voter made an honest attempt to cast his ballot. Bell v. Clawson, 261 Ill. 153.

Crosses Improperly Placed.

Where a cross appears in a republican circle, crosses after the names of two democratic candidates may be held from the appearance of the ballot to be "distinguishing marks," which will invalidate the ballot, where no explanation is given as to how the marks came to be on the ballots. Brents v. Smith, 250 Ill. 529.

Where a voter makes a cross in the democratic circle, and also three crosses opposite the name of a candidate, the fact is to be regarded as an attempt to cumulate his vote for such candidate, and not as indicating an intention to make a "distinguishing mark," which would vitiate his ballot. Hodgson v. Knoblauch, 268 Ill. 324.

Cross in Wrong Circle.

Where a voter makes a cross in a People's Party circle, the fact that he has also made a cross in the republican circle, which party has nominated no candidates, is not to be regarded as a "distinguishing mark," which would vitiate the ballot, it appearing that the candidate Party" was in fact a republican. Bell v. Clawson, 261 Ill. 153.

Crosses with Different Pencils.

The facts that two of the five crosses on a ballot are made with an indelible purple pencil and the other three with a black pencil does not of itself make the crosses "distinguishing marks." Grubb v. Turner, 259 Ill. 445.

Cross on Back of Ballot.

A cross on the back of a ballot, a little under the official printing, made by some blunt instrument pressing into the paper, but bearing no mark of lead or other marking substance, and showing slightly through the paper when held to the light, but not in such a way as to indicate a mark for any candidate, is not a "distinguishing mark," which will vitiate the ballot. Brents v. Smith, 250 Ill. 529.

Parallel Lines.

Where a voter makes a cross in a party circle, two parallel lines appearing on the ballot opposite the name of a candidate of another party is not to be regarded as a "distinguishing mark," which will vitiate the ballot, but as an ineffectual attempt to vote for such candidate. Hodgson v. Knoblauch, 268 Ill. 322.

Diagonal Line in Circle.

Where a ballot contains crosses in the circles of two parties, a diagonal line in the circle of another must be regarded as a "distinguishing mark." Grubb v. Turner, 259 Ill. 444.

Where a voter has made a cross in a party circle, a line through another party circle, with an attempt to erase it, as if the voter had drawn a moistened finger over the circle, is not a "distinguishing mark," which would vitiate the ballot. Brents v. Smith, 250 Ill. 531.

A diagonal mark in the square on the progressive ticket for a certain office where there is no candidate for that office is not a "distinguishing mark" which vitiates the ballot, where it appears that the voter was attempting to cast his balrunning on the ticket entitled "People's | lot, and not to make a distinguishing mark. Hodgson v. Knoblauch, 268 Ill. 322.

Where a voter makes a cross in the democratic circle, diagonal marks in two of the squares opposite the names of republican candidates are not "distinguishing marks" which will vitiate the ballot, where it appears that the voter was attempting to cast his ballot, and not to make such marks, the inference being that he commenced to make crosses in the squares and changed his mind. Hodgson v. Knoblauch, 268 Ill. 322; Tandy v. Lavery, 194 Ill. 374.

Irregular Triangular Mark.

A mark in light pencil on the lower right hand corner of a ballot, about one and one-half inches long, then turning at right angles and running in a curve about one inch, then taking a little jog or fork and running back toward the first stroke almost parallel with the first line, forming an irregular figure like a triangle, is not to be regarded as a "distinguishing mark," which will vitiate the ballot, although there is a possibility that it may have been so intended, it being also possible that it got on the ballot by mistake. and it being impossible for a voter to describe such a mark with such certainty that another person could identify the ballot. Winn v. Blackman, 229 Ill. 211.

Horizontal Lines Through Circle.

Where a ballot contains a cross in a party circle, horizontal lines through the other party circles are to be regarded as a "distinguishing mark," which will vitiate the ballot. Grubb v. Turner, 259 Ill. 441.

Curved Line.

Where a ballot contains crosses in the circles of two parties, a curved line drawn at the head of the ballot from the circle of one party to that of the other constitutes a "distinguishing mark," the mark being placed on the ballot deliberately, and not being capable of being used, in whole or in part, for the purpose of indicating the voter's choice. Grubb v. Turner, 259 Ill. 444.

Marks Disfiguring Ballot.

Marks not placed on the ballot with the intention of indicating the voter's choice, and which disfigure the ballot by obliterating the means of identification constitute a "distinguishing mark," which will vitiate the ballot. Grubb v. Turner, 259 Ill. 441.

What Constitutes as Question of Fact.

The question whether a mark appearing on a ballot is a "distinguishing mark," which will vitiate the ballot, is a question of fact. Brents v. Smith, 250 Ill. 528; Kerr v. Flewelling, 235 Ill. 331; Winn v. Blackman, 229 Ill. 212.

DISTRACTED PERSON.

The test as to whether a person for whom a conservator has been applied for is a "distracted person," within the meaning of section 1 of the Lunatics, Idiots, Drunkards and Spendthrifts Act (J. & A. ¶ 7285), is whether such person has sufficient mental capacity to transact ordinary business—to take care of and manage his or her own property. Snyder v. Snyder, 142 Ill. 68.

DISTRESS.

(Fr. distraindre, to draw away from.) The taking of a personal chattel out of the possession of a wrongdoer into the custody of the party injured, to procure satisfaction for the wrong done. 3 Bl. Comm. 6. It is generally resorted to for the purpose of enforcing the payment of rent, taxes, or other duties, as well as to exact compensation for such damages as result from the trespasses of cattle.

This remedy is of great antiquity, and is said by Spelman to have prevailed among the Gothic nations of Europe from the breaking up of the Roman empire. The English statutes since the days of Magna Charta have, from time to time, extended and modified its features to meet the exigencies of the times.

DISTRESS INFINITE.

In English practice. A process commanding the sheriff to distrain a person

from time to time, and continually afterwards, by taking his goods by way of pledge to enforce the performance of something due from the party distrained upon. In this case, no distress can be immoderate, because, whatever its value may be, it cannot be sold, but is to be immediately restored on satisfaction being made. 3 Bl. Comm. 231. It was the means anciently resorted to to compel an appearance.

DISTRIBUTEES.

Refers to Those Within Statute of Distributions.

The term "distributees," used in sections 117 and 118 of the Administration Act (J. & A. ¶¶ 166, 167), relating to the refunding of distributive shares of intestate estates, refers to such persons as come within the Statute of Distributions, and take intestate estates. Wolf v. Griffin, 13 Ill. App. 560.

The term "distributees," used in sections 117 and 118 of the Administration Act (J. & A. ¶¶ 166, 167), relating to the refunding of distributive shares, does not include a creditor of an intestate estate who has recovered judgment on a claim in the county court. Wolf v. Griffin, 13 Ill. App. 560.

DISTRIBUTION.

The division by order of the court having authority, among those entitled thereto, of the residue of the personal estate of an intestate after the payment of the debts and charges. Wolf v. Griffin, 13 Ill. App. 560.

DISTRIBUTIVE FINDING OF THE ISSUE.

The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, i. e., in part for plaintiff, and in part for defendant. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was

joined, a verdict might be found for the plaintiff as to the goods, and for the defendant as to the work. Steph. Pl. (7th Ed.) 77d.

DISTRICT.

Elections Act—Meaning Gathered from Context.

The meaning of the word "district," as used in the Elections Act (J. & A. ¶¶ 4725 et seq.), must be gathered very largely from the connection in which it is used in each instance. People v. Markiewicz, 225 Ill. 568.

"'Precinct" Compared.

The words "district" and "precinct" are not always used in the Elections Act (J. & A. ¶¶ 4725 et seq.), with the same meaning, but usually, although not always, the word "precinct" is used in that act as meaning a larger territory than a "district," the latter being a subdivision of a precinct. People v. Markiewicz, 225 Ill. 568.

The word "district," as used in the act of 1885, relating to the election of school officers in cities, is used as covering a larger territory than the word "precinct." People v. Markiewicz, 225 Ill. 568.

When "Precinct" Synonymous.

The words "district" and "precinct," as used in section 30 of the Elections Act (J. & A. ¶ 4755), relating to the change of election precincts, are used interchangeably. People v. Markiewics, 225 Ill. 568.

"County" Synonymous.

The term "district," used in section 5 of article 2 of the Constitution of 1870, relating to the right of trial by jury, is convertible with "county," also used in that section. People v. Rodenberg, 254 Ill. 391; Chicago v. Knobel, 232 Ill. 114; Weyrich v. People, 89 Ill. 94. To the same effect see Buckrice v. People, 110 Ill. 35.

Jury Trials.

The word "district," used in section 5 of article 2 of the Constitution of 1870,

relating to the right of trial by jury, refers to a district wholly within a county, and prevents the legislature from creating a district part of which shall be in one county and part in another. People v. Rodenberg, 254 Ill. 392.

The word "district," as used in section 5 of article 2 of the Constitution of 1870, relating to jury trials, is descriptive of the territory which, in legal contemplation, comprises the visne, over which the jurisdiction of the court for the purpose of prosecution for the commission of crimes and misdemeanors extends. People v. Rodenberg, 254 Ill. 391; Weyrich v. People, 89 Ill. 94.

DISTRINGAS.

A writ directed to the sheriff, commanding him to distrain a person of his goods and chattels to enforce a compliance with what is required of him.

It is used to compel an appearance where the party cannot be found, and in equity may be availed of to compel the appearance of a corporation aggregate. 4 Bouv. Inst. note 4191; Comyn, Dig. "Process" (D 7); Chit. Prac.; Sellon, Prac.

A form of execution in the actions of detinue and assize of nuisance. Brooke, Abr. pl. 26.

DISTURB, DELAY, HINDER, OR DEFRAUD.

Frauds and Perjuries Act.

In the expression "disturb, delay, hinder or defraud," used in section 4 of the Frauds and Perjuries Act (J. & A. ¶ 5870), relating to fraudulent conveyances, the words "disturb," "delay," and "hinder" import only different modes of defrauding a creditor of his rights, and are merely more specific statements of various forms of fraud, the word "defraud" being a generic term which comprehends them all. Weber v. Mick, 131 Ill. 531.

DISTURBANCE.

A wrong done to an incorporeal hereditament by hindering or disquieting the

owner in the enjoyment of it. Finch, Law, 187; 3 Bl. Comm. 235; 1 Swift Dig. 522; Comyn, Dig. "Action upon the Case," "Pleader" (3 I 6); 1 Serg. & R. (Pa.) 298; 41 Me. 104. The remedy for a disturbance is an action on the case, or, in some instances in equity, by an injunction.

- Disturbance of Common.

Any act done by which the right of another to his common is incommoded or hindered. The remedy is by distress (where beasts are put on his common), or by action on the case, provided the damages are large enough to admit of his laying an action with a per quod. Cro. Jac. 195; Co. Litt. 122; 3 Bl. Comm. 237; 1 Saund. 546; 4 Term R. 71.

- Disturbance of Franchise.

Any acts done whereby the owner of a franchise has his property damnified, or the profits arising thence diminished. The remedy for such disturbance is a special action on the case. Cro. Eliz. 558; 2 Saund. 113b; 3 Sharswood, Bl. Comm. 236; 28 N. H. 438.

- Disturbance of Tenure.

Breaking the connection which subsists between lord and tenant. 3 Bl. Comm. 242; 2 Steph. Comm. 513.

— Disturbance of Ways.

This happens where a person who hath a right of way over another's ground by grant or prescription is obstructed by inclosures or other obstacles, or by ploughing across it, by which means he cannot enjoy his right of way, or at least in so commodious a manner as he might have done. 3 Sharswood, Bl. Comm. 242; 5 Gray (Mass.) 409; 7 Md. 352; 23 Pa. St. 348; 29 Pa. St. 22.

DITCH.

The word "ditch," as defined in section 57 of the act of 1879 (J. & A. ¶ 4438), known as the Levee Act, includes both open and covered drains or ditches. Wayne City, etc., District v. Boggs, 262 Ill. 845.

The word "ditch," as used in the act of 1879, known as the Levee Act, includes any drain or water course. Levee Act § 57 (J. & A. ¶ 4438); Wayne City, etc., District v. Boggs, 262 Ill. 345; Briar v. Job's Creek, etc., District, 185 Ill. 260.

DIVERSITE DES COURTS.

A treatise on courts and their jurisdiction, written in French in the reign of Edward III., as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534. Crabb, Hist. Eng. Law, 330, 483; 3 Bl. Comm. 53; 3 Reeve, Hist. Eng. Law, 152; 3 Steph. Comm. 414.

DIVES.

In the practice of the English chancery division, "dives costs" are costs on the ordinary scale, as opposed to the costs formerly allowed to a successful pauper suing or defending in forma pauperis, and which consisted only of his costs out of pocket. Daniell, Ch. Pr. 43; Cons. Ord. xl 5.

DIVIDE.

A mere direction in a will to "divide" property does not imply a power of sale. Gammon v. Gammon, 153 Ill. 45.

DIVIDEND.

A corporate profit set aside, declared and ordered by the directors to be paid to the stockholders on demand or at a fixed time. DeKoven v. Alsop, 205 Ill. 313; Cratty v. Peoria, etc., Ass'n, 120 Ill. App. 602; Alsop v. DeKoven, 107 Ill. App. 209.

That portion of its profits which the corporation, by its directory, sets apart for ratable division among its stockholders. Cratty v. Peoria, etc., Ass'n, 120 Ill. App. 602.

A cash dividend is a disbursement to the stockholder of accumulated earnings, and the corporation at once parts irrevocably with all interest therein. But a stock dividend involves no disbursement by the corporation. It parts with nothing, and the stockholder receives merely certificates of stock which evidence, with his former shares, his interest in the entire capital. It is true that stock dividends represent an addition from accrued earnings to the capital of the company; but they do not, in the view of our Supreme Court, represent income, but merely additions to the source of income. Hale Private Corporations 227.

A stock dividend certainly does not increase at all the capital of the corporation. In this sense it may be called a "fictitious" increase of capital stock. But, except in railroad companies, stock dividends may legally increase the number of shares of stock outstanding. Hale Private Corporations 226.

DIVISION.

The word "division," used in section 11 of article 5 of the Constitution of 1848, relating to the qualifications of judges, is only applicable to judges of the supreme court. People v. Wilson, 15 Ill. 390.

DIVISUM IMPERIUM.

(Lat.) A divided empire or jurisdiction; a jurisdiction shared between two tribunals, or exercised by them alternately. This classic phrase is frequently applied in the books to the jurisdiction alternately exercised by the courts of common law and admiralty, between high and low water mark, where the sea ebbs and flows; the one having jurisdiction upon the water when it is full sea, and the other upon the land when it is an ebb. Finch, Law, bk. 2, c. 1, p. 78; 5 Coke. 107; 1 Bl. Comm. 110; Molloy de Jur. Mar. 231; 1 Kent, Comm. 366. It is applied, also, to the jurisdiction exercised by courts of common law and equity over the same subject. 4 Steph. Comm. 9.

DIVORCE.

The dissolution or partial suspension, by law, of the marriage relation.

The dissolution is termed "divorce from the bond of matrimony," or, in the Latin form of the expression, a vinculo matrimonii; the suspension, divorce from bed and board, a mensa et thoro. The former divorce puts an end to the marriage; the latter leaves it in full force. Bish. Mar. & Div. § 292. The term "divorce" is sometimes also applied to a sentence of nullity, which establishes that a supposed or pretended marriage either never existed at all, or at least was voidable at the election of one or both of the parties.

The word "dunce" as used in the Illinois Dunce Act (J. & A. ¶ 4215 et seq.) is not confined to the annulment of lawful marriages, but embraces also suits to declare the nullity of illegal marriages, though void ab initio. Hart v. Hart, 198 Ill. App. 155.

DIVORCE SUIT.

A divorce suit is for the purpose of dissolving a marriage which the parties thereto had legal capacity to contract. Pyott v. Pyott, 191 Ill. 288.

DO, DICO, ADDICO.

(Lat. I give, I say, I adjudge.) Three words used in the Roman law to express the extent of the civil jurisdiction of the practor. Do denoted that he gave or granted actions, exceptions, and judices; dico, that he pronounced judgment; addico, that he adjudged the controverted property, or the goods of the debtor, etc., to the plaintiff. Kaufm. Mackeld. Civ. Law, 187; Id. 24, § 35, note b; Calv. Lex.

DO UT FACIAS.

(Lat. I give that you may do; I give [you] that you may do or make [for me].) A formula in the civil law, under which those contracts were classed, in which one party gave or agreed to give money, in consideration the other party did or performed certain work. Dig. 19. 5. 5; 2 Bl. Comm. 444. Do tibi codicem, ut facias mihi scribi disgestum, I give you a code, that you may have a digest written (or copied) for me. Bracton, fol. 19.

The particle ut, in this and the foregoing phrase, is considered as denoting or expressing a consideration; so much, that Blackstone has treated them as forms of consideration. 2 Bl. Comm. ubi supra. Strictly, however, ut denotes that the civilians called modus (qualification); quia being the particle employed to denote what they called causa, which is "consideration." translated generally Bracton, fol. 18b. See "Consideration;" "Causa." Britton calls these phrases or formulae, conditions, and repeats them after Bracton; but the passage in the original edition is much corrupted. Britt. c. 36.

DOCK WARRANT.

A document issued by a dock company or dock owner in England, stating that certain goods therein mentioned are deliverable to a person therein named, or to his assigns, by indorsement. warrants in form resemble bills of lading but they differ from them in this, that, when goods are at sea, a purchaser who takes a bill of lading has done all that is possible to obtain possession of them, while a purchaser who takes a dock warrant can at any moment lodge it with the dock company, and so take actual or constructive possession of the goods. It therefore seems that the indorsement of a dock warrant does not, at common law, pass the ownership in the goods, or divest the vendor's lien if the goods have not been paid for, but merely operates as a constructive delivery of them as between the indorser and indorsee, until the dock company has "attorned" to the indorsee by agreeing to hold the goods for him. Benj. Sales, 573, 674; 3 C. P. Div. 373, Dock warrants, however, are included in the factors' acts among the "documents of title," the possession of which gives a factor power to confer a good title to the goods on persons dealing with him in good faith. Benj. Sales. 668. See "Factors' Acts."

DOCKET.

A name given to a book in which is put down an abstract, minute or memoranda of orders of court made from time to time during the day. Morgan, etc., Co. v. Gray, etc., Co., 108 Ill. App. 99.

DOCTOR AND STUDENT.

The title of a work written by St. Germain in the reign of Henry VIII., in which many principles of the common law are discussed in a popular manner. It is in the form of a dialogue between a doctor of divinity and a student in law, and has always been considered a book of merit and authority. 1 Kent, Comm. 504; Crabb, Hist. Eng. Law, 482.

DODRANS.

(Lat.) In Roman law. A subdivision of the as, containing nine unciae; the proportion of nine-twelfths, or three-fourths. 2 Bl. Comm. 462, note; Tayl. Civ. Law, 492.

DOG.

A safety appliance attached to an elevator and designed to set and press into the sides of the shaft, and thus prevent the elevator from falling. McGregor v. Reid, 178 Ill. 466.

DOG-DRAW.

In forest law. Drawing after, that is, pursuing, a deer with a dog. One of the circumstances which constituted what was called the manifest deprehension of an offender against venison in a forest; that is, his being caught in the act of committing the offense, or taken with the mainour, as it was otherwise called. Manw. For. Law, pt. 2, c. 8.

DOGS.

By the early laws of England various fines for the misdeeds of these much-cherished nuisances were imposed, for example: "If a dog tear or bite a man, for the first misdeed let VI shillings be paid—if he the [owner] give him food; for the second time XII shillings; for the third XXX shillings. If after any

of these misdeeds the dog escape, let this 'bot' nevertheless take place."

Canon 26 of King Edgar makes this provision: "Nor within the church enclosure let there come any dog, nor yet more a swine, if it can be so ordered."

DOING.

[L. Lat. faciendo, faciendum.] The formal word by which services were reserved and expressed in old conveyances; as "rendering" (reddendo) was expressive of rent. Perk. ch. 10, sect. 625, 635, 638.

"Doing" may create a covenant,—e.g. "doing suit" (Vyvyan v. Arthur, 1 B. & C. 410), so of the phrase "doing, fulfilling and performing." Boone v. Eyre, 2 W. Bl. 1312.

DOING BUSINESS.

"The word 'business' as used in the paragraph [of the statute] which levies a tax 'upon all agents of packing-houses,' refers to and means the business of the packing-house agent; and that one exercising the vocation of such an agent is 'doing business' within the meaning of the act." Stewart v. Kehrer, 115 Ga. 188.

"In the earlier part of the section [of an act providing that every corporation, joint stock company, etc., doing business in this state shall be subject to and pay a tax, as a tax upon its corporate franchise or 'business,' into the state treasury, etc.] the words 'doing business in this state' are used, and when the word 'business' is used later it has reference to the same business which was then in the legislative mind." People v. Equitable Trust Co., 96 N. Y. 394.

"We do not understand that this statute [requiring that a married woman doing business on her own account must file a certificate, etc.] is to be restricted in its application to cases in which a married woman goes into business as a trader in the ordinary sense of the word, or manufactures goods for sale, or keep a boarding-house, but that agriculture may be one of those occupations in which

she may do business on her separate account within the meaning of the statute." Ames, J., Snow v. Sheldon (1879), 126 Mass. 334.

"These words ['and doing business herein,' in an act providing for the taxing of companies doing business in this state] must be construed to have reference to the ordinary business of the corporation, conducted by itself under its corporate powers." State v. Bradford Savings Bank, 71 Vt. 239.

"Did Meserve, by entering into the service of Brackett at a stipulated price by the day, violate his agreement 'not to do any express business' over any other road running to a place on the line of the plaintiff's business? The intention of the parties, as gathered from the written instrument, seems have been that the defendants should no longer carry on the express business on their own account over the plaintiff's route, or over other roads to competing points on their line. It excludes them from interest or profit in the business, but there is no stipulation excluding them from personal employment in it in the service of another, and hence we think that entering the service of another as employee merely is not engaging in or carrying on business of expressmen within the meaning of the agreement." Eastern Express Co. v. Meserve, 60 N. H. 198.

"The taking of the note was the making of a contract, which signifies the doing of business, and is within the prohibition of the law [the statute prohibiting the transaction of 'business' by certain corporations]." Hancheny v. Leary, 12 Oreg. 44.

"Transacting Business" Synonymous.

The expression "doing business" is equivalent to the expression "transacting business." International, etc., Co. v. Mueller, 149 Ill. App. 511.

Refers to Ordinary Business.

The expression "doing business," as used in statutes regulating foreign corporations, has a settled and recognized meaning, referring only to the transac-

tion of the ordinary business in which the corporation is engaged, and not including acts not constituting any part of its ordinary business. Alpena, etc., Co. v. Jenkins, etc., Co., 244 Ill. 360; Pressed, etc., Co. v. Hughes, 155 Ill. App. 85.

Refers to Business Corporations Organized For.

The expression "doing business," used in section 26 of the Corporations Act (J. & A. ¶ 2443), relating to the conditions under which foreign corporations may do business in this state, refers to the business for which the corporation was organized. Booz v. Texas & P. Ry. Co., 250 Ill. 380; People v. Chicago I. & L. Ry. Co., 223 Ill. 588; Mandel v. Swan, etc., Co., 154 Ill. 187; International, etc., Co. v. Mueller, 149 Ill. App. 511; Bradbury v. Waukegan, etc., Co., 113 Ill. App. 604.

Corporations Included.

The expression "doing business," used in section 26 of the Corporations Act (J. & A. ¶ 2443), imposing the same liabilities on foreign as on domestic corporations, refers to those which are doing business, and not to those who may thereafter be allowed to do business. Stevens v. Pratt, 101 Ill. 216.

By-Laws.

The expression "doing business," used in section 26 of the Corporations Act (J. & A. ¶ 2443), imposing the same liabilities on foreign as on domestic corporations, has no reference to the form of the by-laws of the foreign corporation, with reference to its own members. Mandel v. Swan, etc., Co., 154 Ill. 187.

Soliciting Business.

Where a foreign corporation, in a state having a restrictive statute, employs an agent to solicit orders and make estimates of the material to be furnished therefor, which order is sent to the home office of the foreign corporation in a foreign state, where it is accepted and the goods shipped directly from the home office to the customer, the foreign corporation is not "doing business" in the

state where the order was taken, within the meaning of the restrictive statute. Pressed, etc., Co. v. Hughes, 155 Ill. App. 87; A. H. Woods, etc., Co. v. Chicago, C. & L. R. Co., 147 Ill. App. 570; Yost, etc., Co. v. Cavanaugh, etc., Co., 147 Ill. App. 420; Havens, etc., Co. v. Diamond, 93 Ill. App. 564; March, etc., Co. v. Strobridge, etc., Co., 79 Ill. 687.

Acting as Trustee.

A foreign corporation is "doing business" in this state, within the meaning of section 26 of the Corporations Act (J. & A. ¶ 2443), relating to the conditions under which foreign corporations may do business in this state, when such corporation accepts the appointment of trustee under a trust deed executed by a railroad company to secure an issue of mortgage bonds, certifies bonds issued thereunder, and appoints an agent who actively looks after the matter of the bonds in its interest. Farmers', etc., Co. v. Lake Street E. R. Co., 173 Ill. 456.

Maintaining Office.

A foreign corporation whose properties are in a foreign state is not "doing business" in this state, within the meaning of section 26 of the Corporations Act (J. & A. ¶ 2443), imposing the same liabilities on foreign as on domestic corporations, where such corporation opens an office in this state, placing a safe and some office furniture therein for the convenience and use of the secretary and treasurer, which office was used for the purpose of directors' meetings, the issuance of certificates of stock, and for keeping the books. Bradbury v. Waukegan, etc., Co., 113 Ill. App. 607.

A foreign fire insurance company which maintains an office in this state and solicits fire insurance from citizens thereof on property owned by them outside the state is "doing business" in this state, within the meaning of section 26 of the Insurance Act (J. & A. ¶ 2443), relating to the conditions under which foreign corporations may do business in this state, although such foreign corporation insures no property in this state. North American, etc., Co. v. Yates, 214

Ill. 282. To the same effect see Santa Clara, etc., Academy v. Sullivan, 116 Ill. 384, where the foreign corporation was an academy.

Peddling Goods.

Pedding goods in the state by a foreign corporation constitutes "doing business" within the state within the meaning of the Foreign Corporation Statute of Illinois (J. & A. ¶ 2526 et seq.). Metropolitan Discount Co. v. Pitsch, 208 Ill. App. 407.

Bringing Suit.

The expression "doing business," as used in statutes regulating foreign corporations, does not include the act of instituting and prosecuting suits. Alpena, etc., Co. v. Jenkins, etc., Co., 244 Ill. 360; Pressed, etc., Co. v. Hughes, 155 Ill. App. 85; Havens, etc., Co. v. Diamond, 93 Ill. App. 569.

The expression "doing business," used in section 26 of the Corporations Act (J. & A. ¶ 2443), imposing the same liabilities on foreign as on domestic corporations, has no reference to a resort to the courts to enforce a contract liability. Mandel v. Swan, etc., Co., 154 Ill. 187; Bradbury v. Waukegan, etc., Co., 113 Ill. App. 604.

A foreign corporation receiving by devise, as trustee, lands in this state, with power to sell and dispose of the same, to lease and collect rents and profits, which asserts ownership of the land in this state, and brings suits in the courts concerning it and to enforce contracts in regard to it, is "doing business" in this state, within the meaning of section 26 of the Corporations Act (J. & A. ¶ 2443), relating to the conditions under which foreign corporations may do business in this state. Pennsylvania Co. v. Bauerle, 143 Ill. 471.

The expression "doing business," used in section 3 of the act of 1899, relating to foreign corporations, does not include the act of bringing and conducting a suit to enforce a contract made on an order taken by a drummer, and accepted by plaintiff in another state. Havens, etc., Co. v. Diamond, 93 Ill. App. 569.

Railroads and Warehouses Act.

The expression "doing business," used in section 6 of the act of 1871 (J. & A. ¶8932), known as the Railroad and Warehouse Commission Act, relating to the reports required of railroads, and as applied to a foreign railroad corporation, includes all companies engaged in the usual business of a railroad corporation within this state. People v. Chicago, I. & L. Ry. Co., 223 Ill. 588.

DOITKIN.

Dotkin, Dodkin. A foreign coin of small value, prohibited by statute 3 Hen. V. c. 1, from being introduced into England. Crabb's Hist. Eng. Law, 357. 3 Reeves' Hist. 261. 4 Bl. Com. 99. According to Mr. Grabb, it was the Dutch duitkin, of the value of two penningen.

DOLE.

"The share of any man in a lot meadow, or common meadow which is divided yearly and distributed by lots among the owners; V. Co. Litt. 4 a.; Speim., Dolae; Pratt v. Groome, 15 East, 235; Elton on Commons, 31; Wms. on Commons, 90. The owner of a dole may have a freehold in the soil (Co. Litt. 4 a, 343 b); or he may have only vestura terræ (Tenants of Owning's Case, 4 Leon. 43).

DOLI CAPAX.

Lat. Capable of mischief or criminal intention; of the age of discretion; capable of distinguishing between good and evil. A phrase derived from the civil law, in which it was used in defining the liability of infants to punishment for crimes. Dig. 29. 5. 14. Dig. 50. 17. 111. Dig. 47. 2. 23. 1 Bl. Com. 464. 4. Bl. Com. 22. According to Bracton, a female is more doli capax than a male, as arriving sooner at maturity. Bract. fol. 86 b.

DOLLAR.

Dollar is the legal unit of the United States. Hunt v. Smith, 9 Kansas, 152.

A dollar is a silver coin weighing 412½ grains, or a gold coin weighing twenty-five and four-fifth grains, of ninetenths pure to one-tenth alloy of each metal. Borie v. Trot, 5 Phila. R. 404.

The term "dollar" is an expression of value, as well as the name of a coin; and hence the word "dollar" is uncertain as a description, since it may be used to denote a number of cents or dimes, as well as of dollars proper, but it is certain as an expression of value. State v. Barr, 61 N. J. Laws, 132.

A tax receipt which simply shows that "dollars" were received, and fails to state that whatever amount was received was in full of the taxes assessed, and there is no character opposite the figures to indicate what they are designed to represent, is fatally defective. Cook v. Norton, 43 Ill. 391.

"Dollars and cents" have a well-recognized meaning as commonly used. The common definition is, the unit of money by which values of commodities are measured. People v. Lammerts, 164 N. Y. 143.

"The legal meaning of the terms dollars and cents is specie, that is gold and silver, or whatever thing or article or paper the laws of the United States [declare] to be legal tender." Miller v. Lacy, 33 Tex. 353.

DOLLY BAR.

A big hammer with a long handle, to hold against rivets when men are riveting. Leonard v. Kinnare, 174 Ill. 535.

DOMBEC.

Domboc. Sax. [from dom, judgment, and bec, boc, a book]. Dome-book or doom-book. A name given, among the Saxon, to a code of laws. Several of the Saxon kings published dombocs, but the most important one was that attributed to Alfred. Crabb's Hist. 7. 1 Bl. Com. 64. This is sometimes confounded with the celebrated Domesday book. A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England;

containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanours, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV. but is now lost. 1 Bl. Com. 64, 65. This is stated by Blackstone on the authority of the early English historians, though Mr. Hallam considers their authority insufficient to establish the facts. 2 Hallam's Middle Ages, 402, (7th ed.) 1 Steph. Com. 41, 42.

DOMESDAY.

An ancient English record, made in the time of William the Conqueror, and by his command, containing the details of a great survey of the kingdom, including all the demesne lands of the crown, and completed A. D. 1086, or 1087. It consists of two volumes, a greater and a less; the greater containing a survey of all the lands in England (embracing thirty counties), except the counties of Cumberland, Northumberland, Durham, and a part of Lancashire, which were not surveyed, and also Essex, Norfolk and Suffolk, which are comprehended in the lesser volume. 2 Bl. Com. 49, 99. Spelman, voc. Domesdei. Cowell. Blount. Ducange. Crabb's Hist. 52, 53. original Domesday book is still in existence, fair and legible, and is preserved in the Chapter House at Westminster. It was formerly kept with great care in the Exchequer, under three locks. Spelman. It is now printed (its publication having been commenced in 1767, and completed in 1783), and copies may be found in public libraries in this country, but being in the Latin of the times, with numerous contractions and abbreviations, its perusal is a work of very considerable difficulty.

This venerable record, which Spelman calls monumentum totius Britanniæ absque controversia augustissimum, was anciently known in Latin by various names, all indicating the general object of its compilation; as Liber Judiciarius (the judgment book), Censualis Angliæ (the tax book of England). Angliæ Notitia et lustratio (the survey of Eng-

land), Rotulus Regis (the king's roll); Rotulus or Liber Wintoniæ (the roll or book of Winchester). The English term Domesday appears to be compounded of dome or dom. (Sax. judgment) and day, the precise meaning of which has been a matter of some doubt. Cowell supposes that it was made a part of the word, not with any allusion to the final day of judgment, but to double and confirm the meaning; day having itself, in fact, the same meaning as dome, that is, judg-Cowell voc. Daysman. But that ment. the idea of the day of judgment did enter into the original composition of the word, seems clear from the testimony of the old chroniclers, who have taken some pains to explain it. In the Black Book of the Exchequer, it is said that this book is called by the native English domesdei, that is, the day of judgment, by a figure. (Hic liber ab indigenis Domesdei nuncupatur, id est, dies judicii, per metaphoram.) For as the sentence of that last severe and terrible ordeal cannot by any artifice be escaped, so where a controversy has arisen in the kingdom on subjects noticed in that book, and an appeal is made to it, its sentence can neither be impugned nor evaded with impunity. Lib. Nig. Scacc. par. 1, cap. antepenult. Again, Ingulphus has recorded that this roll was called by the English Domesday, from its comprehensiveness, embracing all the lands of the whole kingdom completely. (Iste rotulus—ab Anglicis, pro sua generalitate, omnia tenementa totius terræ integré continente, Domesday cognominatur.) Ingulphus, cited in Spelman. These accounts of the origin of the word, given by writers nearly contemporary with the compilation of Domesday itself, are very forcibly expressive of the feelings with which this great survey of the Conqueror was regarded by the native population (or indigenæ) of England; the searching minuteness of its details, and its overwhelming authority as a record, suggesting to the unlettered mind of the age a comparison with the dread book of final doom itself.

This great census appears to have been compiled in the following manner: The king sent five of his justices into every shire, to make the requisite inquiries by the oaths of persons living on the spot, (per provincialium jurajuranda). These persons, who are called taxatores (assessors) were chosen from every neighborhood, and gave a particular description of their several districts, with estimates of value. Hence the unequalled minuteness of the survey, rendering almost literally true the words of Ingulphus, that there was not a hide of land in England but the king knew its value, and its owner's name, nor a pool nor a place (nec lacus nec locus) that was not described in the king's roll, with its rent and income. Ingulph. Hist. Croyl. cited in Spelman. Termes de la Ley.

The following sketch of the general plan of Domesday may serve to give some idea of its completeness as a census of England. It contains a description, not only of each county, rape, lathe, hundred or wapentake, but even the smaller divisions, cities, boroughs, towns, castles, manors. Mention is made of the quantity of land in each case, by the carve and specifying not only whether acre. demesne or tenemental, but its quality, as whether arable, meadow, pasture, wood, fishery, marsh, common, etc., and sometimes how much live stock as sheep, hogs, etc., was raised upon it: how many men each manor supported, and their condition, whether knights, husbandmen, laborers, slaves (giving the distinctive names then used): what was the present value of its income, or what it paid as tax tribute, rent, services and customs; and what these were in the time of Edward the Confessor. This last feature of Domesday has probably led to the singular mistake of Fitzherbert and Coke, that it was compiled in the time of St. Edward. F. N. B. 16, D. 3 Co. pref. vii.

DOMESTIC.

The word is appropriately used in an act of the state legislature to describe only a product exclusively belonging to, and within the sovereign jurisdiction of the state. Com. v. Giltinan, 64 Pa. St. 103.

Uses or Purposes.

Books are articles of "domestic use and enjoyment." Cornwall v. Cornwall, 10 L. J. Ch. 364; 12 Sim. 303.

"The term 'domestic purposes' [within the meaning of the rule that each riparian proprietor has a right to the ordinary use of the water flowing past his land for his natural wants, including the domestic purposes of his home or farm] extends to culinary and household purposes, to the watering of a garden [Bristol Waterworks Co. v. Wren, 52 L. T. N. S. 655; 54 L. J. M. C. 97], and to the cleansing and washing, feeding and supplying the ordinary quantity of cattle [Attorney General v. Great Eastern Railway, 23 L. T. N. S. 344; Lowe v. Lambeth Waterworks Co., cited 52 L. T. N. S. 661; Union Mill Co. v. Ferris, 2 Sawyer, 176]. It would appear to extend also to brewing [Wilts Canal v. Swindon Water Co., L. R. 9 Ch. 457; Coulson & Forbes Waters, 116], and the washing of carriages [Busby v. Chesterfield Water Co., El. Bk. & El. 176; Coulson & Forbes Waters, 116], but it does not include such manufacturing use as the grinding, washing and cooling of rubber [Para Rubber Shoe Co. v. Boston, 139 Mass. 155]. And railway companies, as riparian owners, are not entitled to take water for their engines so as to affect injuriously the navigation of the stream or the rights of other riparian owners, such use not being domestic. So of a water company [Lord v. Meadville W. Co., 26 W. N. C. (Penn. 110). Gould Waters, § 205, citing also Ingraham v. Camden W. Co., 82 Maine, 335; In re Barre Water Co., 62 Vt. 27.

Animals.

An animal (whether a quadruped or not, 17 & 18 V. c. 60, s. 3, and not absolutely feræ naturæ) which either by habit or specal training lives in association with man is a "domestic animal." Thus a cock was held a "domestic animal" in Bridge v. Parsons, 32 L. J. M. C. 95; 3 B. & S. 382; 11 W. R. 424; 7 L. T. 784; 27 J. P. 231. Parrots may become, but young unacclimatised parrots are not, "domestic animals" (Swan v. Sanders, 50 L. J. M. C. 67; 29 W. R. 538; 45 J. P.

522; 44 L. T. 424); nor, semble, is a performing bear a domestic animal (28 S. J. 746).

"Fowls and poultry are within the term 'domestic animal,' as used in that section [interpreting the word 'animal' to mean 'any horse, * * * dog, cat, or any other domestic animal'], as much as bulls, oxen, cows, and other animals which are mentioned by name." Wightman, J., Budge v. Parsons (1863), 3 B. & S. 386.

"The term 'domestic animal' * * * would include, I think, any pet bird, such as a parrot, canary, or linnet, and it seems to me that linnets kept as these were [trained and used as decoy-birds, and kept in the house in cages when not so used] are clearly domestic animals within the meaning of the act [§ 2 of 12 & 13 Vict. c. 92, for the prevention of cruelty to animals]." Huddleston, B., in Colam v. Pagett, 120 B. D., 67.

A tame unconfined sea-gull which will go to its owner when called, feed out of the hand and submit to be photographed, being used by the owner for that purpose in the owner's business of a photographer, is not a "domestic animal" within the meaning of a statute providing that if any person shall cruelly illtreat any domestic animal he shall be liable to a penalty. Yates v. Higgins [1896], 1 Q. B. 166. Vaughan Williams, J., in delivering judgment (p. 168) said: "It cannot be contended that, in order to justify a conviction, it is sufficient merely to prove that the animal in question, being an animal which is ordinarily wild, on the particular occasion which is brought to the notice of the court remained tame. * * * Mr. * * relied on the case of Colam v. Pagett (12 Q. B. O. 66), where it was held that linnets kept in captivity and trained as decoy-birds for the purpose of bird-catching were 'domestic animals; but there it was shewn that the linnets were trained to perform a particular service, which cannot be correctly asserted of the seagull in the present case. * * * in Harper v. Marcks ([1894] 2 Q. B. 319) * * * it was held that performing lions, kept in a cage, were not 'domestic animals' within the meaning of the same acts."

Wild rabbits caught in nets, and kept in confinement and fed during five or six days immediately following the capture are not domestic animals within the meaning of statutes imposing penalties for cruelty to domestic animals. Aplin v. Porritt, [1893] 2 Q. B. 57.

DOMESTIC LUMP.

A grade of coal better than steam lump. Dreiske v. Jones, etc., Co., 133 Ill. App. 575.

DOMESTICS.

Those who reside in the house with the master they serve. The term does not extend to workmen and laborers employed out of doors. Wakefield v. The State, 41 Tex. 558.

"Bar-keeper, ex vi termini, imports a person hired, who, from the nature of his station, is forced to perform servile offices within the walls of a public house. He is a domestic, living intra invenia; assisting in the economy of a family." Duncan, J., Boniface v. Scott (1817), 3 S. & R. 354.

DOMICILE.

Defined.

The place where a person lives or has his home. Holt v. Hendee, 248 Ill. 295; Hayes v. Hayes, 74 Ill. 314.

Domicil is an idea of the law. It is the relation which the law creates between an individual and a particular locality or country. Lord Westbury, Bell v. Kennedy, L. R. 1 Sch. App. 307, 320.

The domicil of a person is that place in which his habitation is fixed without any present intention of removing therefrom. Per Chitty, J., in In re Craignish [1892], 3 Ch. 180, citing Story Confi. Laws, § 43.

"The domicil of an independent person is constituted by the factum of residence in a country and the animus manendi, that is, the intention to reside

in that country for an indefinite period." Lopes, L. J., in In re Grove, 40 Ch. D. 242.

Habitation in a place with the intention of remaining there forever, unless some circumstance should occur to alter his intention. Lord Wensleydale, in Whicker v. Hume, 7 H. L. Cas. 124, 164.

That place to be regarded as a man's domicile which he has freely chosen for his permanent abode, and thus for the center—at once for his legal relations and his business. The term permanent abode, however, excludes neither a temporary absence nor a future change, the reservation of which faculty is plainly implied; it is only meant that the intention of mere transitory residence must not at present exist (Savigny).

Domicile is the seat, purely moral and juridical, which the law attributes to each person for the exercise of the rights existing for or against such person. Marcadé, Explic du Code Nap. t. 1, No. 334.

Domicile is nothing else than the legal seat, the juridical seat of every person,—the seat where he is considered to be in the eyes of the law, for certain applications of the law, whether he be corporeally found there, or whether he be not found there. Ortolan — Explication des Institutes, t. 1, No. 80, p. 402.

Domicile consists in the moral relation of a man with the place of his residence, where he has fixed the administrative seat of his fortune, the establishment of his affairs. Proudhon — Cours de Droit Francais, t. 1, p. 119.

The place where one is established and resides with his wife, children, and family, and the greater part of his movable property. El Diccionario de Legislacion, p. 180. Quoted in Holliman v. Peebles, 1 Tex. 673, 688.

The domicile of a person is where he has his true, fixed permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning. Actual residence is not undispensable to retain a domicile after it has once been acquired, but is retained by the mere intention not to

change it and adopt another. MacNeill's Ill. Evidence, 451.

Domicile, then, is the place in which both in fact and intent, the home of a person is established without any existing purpose of mind to return to a former home; it is the place where the person lives, in distinction from the place where he transacts his business; the place where he chooses to abide, in distinction from the place in which he may be for a temporary purpose; the place which he has chosen, in distinction from one to which he may be exiled; if he is entitled in law to command where his place of residence shall be, it is the place which he has himself selected, in distinction from any place which another may have selected for him; if the person is an infant or a married woman, it is the place which the husband or father has ordained, in distinction from the place of the person's own choice; it is ordinarily, in the case of the wife, the place where the husband has his domicile; every person has a domicile; no person has but one; it is the place which the fact and the intent, combining with one another and with the law, gravitate to and center in, as a home. Bishop on Marriage & Divorce, vol. II., bk. 2, sec. 118.

One may be said to have a domicile in that place in which constitutes the principal seat of his residence, of his business pursuits, connections, attachments, and of his political and municipal relations. Wilson v. Terry, 11 Allen, 206.

There must be both the fact of abode and the intention of remaining indefinitely, to constitute a domicile. Hageman v. Fox, 31 Barb. (N. Y.) 476.

Domicile is that place in which habitation is fixed, without any present intention of removing therefrom. State v. Moore, 14 N. Hamp. 454.

A residence at a particular place, accompanied with positive or presumptive proof of continuing in it an unlimited time. In re Wrigley, 8 Wend. (N. Y.) 142.

Domicile is the habitation fixed in any place, with an intention of always staying there, or at least without any intention of removing therefrom. Crawford v. Wilson, 4 Barb. (N. Y.) 520.

Domicile, in a legal sense, is where the person has his true, fixed and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. Cadwalader v. Howell, 3 Harr. (N. J.) 144. (Quoting Story Conf. L. 39.)

In whatever place an individual has set up his household goods and made the chief seat of his affairs and interests; from which, without some special avocation, he has no intention of departing; from which, when he has departed, he is considered to be from home; and to which, when he has returned, he is considered to have returned home. In this place there is no doubt whatever he has his domicile. White v. Brown, 1 Wallace, Jr. (U. S. C. C.) 262.

Domicile means the place where a man establishes his abode, makes the principal seat of his property, and exercises his political rights. Chase v. Miller, 41 Pa. St. 403, 420.

"Domicile is a residence acquired as a final home. To constitute it there must be: (1) residence, actual or inchoate; (2) the non-existence of any intention to make a domicile elsewhere." Hartford v. Champion, 58 Conn. 275, quoting Wharton on Conflict of Laws, § 21.

"Home or domicile, is a place where the person has a right to be. The idea of a right to be and remain at a particular place is inseparable from the conception of home or domicile." Jericho v. Burlington, 60 Vt. 533, quoting Ross, J., in Berlin v. Worcester, 50 Vt. 23.

Chief Justice Shaw's Rule.

No exact definition of "domicile" can be given, as it depends on no one fact or combination of circumstances, and must be determined in each particular case from the whole, taken together. People v. Moir, 207 Ill. 189.

Technical Sense.

In a strict legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. Holt v. Hendee, 248 lll. 295; Hayes v. Hayes, 74 Ill. 314; Hutchings v. Hutchings, 137 Ill. App. 496.

Acquisition.

A man may acquire a domicile if he be personally present in a place and elect it as his home, even if he never design to remain there always, but design at the end of some short time to remove and acquire another. Kreits v. Behrensmeyer, 125 Ill. 193.

"I would venture to suggest that the definition of an acquired domicile might stand thus: 'That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected, or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home.'" Per Kindersley, V.-C., Lord v. Colvin, 4 Drew. 376; 28 L. J. Ch. 366.

"A person can have but one domicile properly so-called, e.g., for the purpose of succession to personalty. It is either the domicile of origin or a domicile of choice. Domicile of origin is fixed by the domicile of the parent at the time of It is that of the father if the child is legitimate; if illegitimate, that of the mother. The domicile of origin prevails until the person has manifested and carried into effect an intention of acquiring a settled home elsewhere. That is called his domicile of choice. When a person, having acquired a domicile of choice in a new country, abandons that country as the country of his home, and has not acquired animo et facto a settled home in another country, he is deemed by law to have reverted to and become domiciled in the country of his domicile of origin. The domicile of origin again continues until a new domicile of choice is acquired." Somerville v. Somerville (1801), 5 Ves. 750-792.

Actual Residence Not Required.

Actual residence is not indispensable to retain a domicile after it is once acquired, but it is retained, animo solo, by the mere intention not to change it and adopt another. Hayes v. Hayes, 74 Ill. 314.

Distinguished from Residence.

Another principle which may be considered as well settled is that a residence once established may be abandoned or lost without having acquired another. In regard to domicile, a word not used in pauper laws, it is different. This cannot be lost without gaining another. Every person owes some duties to society, has some obligations to perform to the government under which he lives, and from which he receives protection. These duties and obligations are not to be laid aside at will, but rest upon and attach to the person from the earliest to the latest moment of his life. It is imposed upon him by the law, at his birth; and though when arriving at legal age he may choose the place where it shall be, it is not at his option whether he shall be without any. With regard to a residence or home it is entirely different. This is a matter of privilege exclusively. It imposes no public burdens, but is private in its nature, relates to personal matters alone, and is the place about which to a greater or less extent cluster those things which supply personal needs or gratify his affections. Hence it is purely and solely a matter of choice, not only where it shall be, but also whether there shall be any. North Yarmouth v. West Gardiner, 58 Me. 207, 211.

"The request for a ruling treats the word 'domiciled' as equivalent to the statutory word 'resident.' Such is the usual but not universal meaning of the word as used in our statutes; Stoughton v. Cambridge, 165 Mass. 251; and in McDaniel v. King, 5 Cush. 469, such was held to be its meaning as used in the original statute of insolvency in this state. St. 1838, c. 163, § 19.

"The question what constitutes domicile is mainly a question of fact, and the element of intention enters into it. Personal absence for a while does not necessarily change one's domicile, and personal presence in a place for a somewhat prolonged period does not necessarily establish domicile there." Olivieri v. Atkinson, 168 Mass. 28, citing Viles v. Waltham, 157 Mass. 542; Borland v. Boston, 132 Mass. 89; Chicopee v. Whately, 6 Allen 508; Harvard College v. Gore, 5 Pick. 370, 374.

"Domicile, it is said, means something more than residence; that it includes residence with an intention to remain in a particular place. Thus a foreign minister has not his domicile where he resides. Domicile is the habitation fixed in any place, with an intention of always staying there, or at least without any present intention of removing therefrom. The residence of a foreign minister at the court to which he is accredited, is only a temporary residence. He is not there animo manendi. The same may be said of the officers, soldiers and seamen. in the army and navy. They may be said to have their domicile in one place and their actual residence in another. generally residence and domicile mean the same thing. The place where a man carries on his established business, and has his permanent residence is his domicile." Crawford v. Wilson (1848), 4 Barb. 520.

"Residence" and "domicile" are not to be held synonymous. "Residence" is an act. "Domicile" is an act completed with an intent. A man may have a residence in one state or country and his domicile in another, and he may be a non-resident of the state of his domicile in the sense that his place of actual residence is not there. Keller v. Carr, 40 Minn. 430.

"There is, however, a wide distinction between domicile and residence, recognized by the most approved authorities everywhere. Domicile is defined to be a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time. To constitute a domicile, two things must concur—first, residence; secondly, the intention to remain there. Domicile, therefore, means more than residence. A man may be a

resident of a particular locality without having his domicile there. He can have but one domicile at one and the same time, at least for the same purpose, although he may have several residences." Long v. Ryan, 30 Gratt. 719, citing Pilson v. Bushong, 29 Gratt. 229; Mitchell v. United States, 21 Wall. 350.

"Residence is not domicile, though domicile is the legal conception of resi-Domicile is residence combined with intention. It has been well defined to be a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time. A man can have but one domicile for one and the same purpose at any one time, though he may have numerous places of residence. His place of residence may be, and most generally is, his place of domicile, but it obviously is not by any means necessarily so, for no length of residence without the intention of remaining will constitute domicile." Stout v. Leonard (1874), 37 N. J. Law. 495.

Home.

Home and domicile may, and generally do, mean the same thing; but a home may be relinquished and abandoned while the domicile of the party, upon which his civil rights and duties depend, may in legal contemplation remain. Exeter v. Brighton, 15 Me. 58, 60, Weston, C. J.

Subject to the distinction that a man may be in fact homeless but cannot be in law without a domicile, the popular term "home" is practically identical with the legal idea of domicile. Still, a man may be domiciled in a country, without having a fixed habitation in any particular spot there, e.g., a man who passes his life in lodgings which he changes from time to time. The breaking up of an establishment does not of itself constitute an abandonment of domicile in the country where it occurs. Per Chitty, in In re Craignish [1892] 3 Ch. 180, citing Dicey Domicil 42-55.

Naturalization Distinguished.

"Naturalization and domicile are very different things. A man may be domi-

ciled in England, although all his life he is a foreign subject." Cotton, L. J., in In re Grove, 40 Ch. D. 236.

Inhabitancy.

But as a man is properly said to be an inhabitant where he dwelleth and hath his home, and is declared to be so by the constitution for the purpose of voting and being voted for; and as one dwelleth and has his home where he has his domicile, most of the rules of the law of domicile apply to the question, where one is an inhabitant. Shaw, C. J., Otis v. Boston, 12 Cush. 44, 49.

Married Women.

"The domicile of a married woman is during coverture the same as, and follows, the domicile of her husband." Dolphin v. Robins (1859), 7 H. L. Cas. 390-423.

Under English Law.

An English subject is domiciled in every part of England; but that is not so in foreign countries where the law of domicile prevails. There a man is domiciled at the particular part of the dominions where he was born, and there are certain acts which he cannot perform unless at his place of domicile. Pollock, C. B., In re Capdevielle, 2 Hurl. & Colt, 985, 1018.

The words "domiciled in England," in sub.-s. 1 (d), s. 6, Bankry. Act, 1883, mean domiciled in England as distinguished from Scotland or Ireland as well as from foreign countries. Ex. p. Cunningham, Re Mitchell, 58 L. J. Ch. 1067.

Under French Law.

Le domicile de tout Français, quant à l'exercice de ses droits civils, est au lien ori il a son principal éstablishment (French Code, art. 102).

The domicile of every Frenchman, as to the exercise of his civil rights, is at the place where he has his principal establishment.

Several French cases describe domicile as "the place allotted to everybody for the use of his civil rights." Melizet's Case, Bulletin des Arrêts de la Cour de Cassation, January, 1869, p. 16; s. c. Dalloz, Recueil Périodique, 1869, pt. 1, p. 264, Sirey, 1869, pt. 1, p. 138, and Otts' Case, Bulletin, etc., January 1869, p. 17.

Changes.

"A domicile once acquired is presumed to continue until it is shown to have been changed. The change cannot be made except facto et animo. Both are alike necessary. absence from a fixed home, however long continued, cannot work the change. There must be the animas to change the prior domicile for another. Until the new one is acquired, the old one remains." Mitchell v. United States, 21 Nal. 353; Tuttle v. Wood (1902), 115 Ia. 509; Wayne v. Greene, 21 Me. 361; Lindsay v. Murphy, 76 Va. 430.

"The causes which impelled the claimant to abandon his own, and fly to the country of the enemy, were not for the purpose of business, or any other lawful purpose or reason whatever. He is represented as flying from the supposed destructive vengeance of his fellow-citizens.

* * A visit superinduced by such terrors, must, perforce, have the characteristics of permanency—of intention to change domicile." State v. de Casinova (1846), 1 Tex. 408.

Domicile of Choice.

"Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicile, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office. the demands of creditors, or the relief from illness; and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation. It is true that residence originally temporary, or intended for a limited period, may afterwards become general and unlimited, and in such a case, so soon as the change of purpose, or animus manedi can be inferred, the fact of domicile is established." Cotton, L. J., in In re Grove, 40 Ch. D. 234, quoting Lord Westbury in Udny v. Udny, Law Rep. 1 H.L. (Sc.) 458.

"The idea of a domicile, independent of locality, and arising simply from membership of a privileged society, is not reconcileable with any of the numerous definitions of domicile to be found in the books. In most, if not all of these, from the Roman Code (10, 39, 7) to Story's Conflict (§ 41), domicile is defined as a locality—as the place where a man has his principal establishment and true home. Probably Lord Westbury was more precisely accurate, when he stated. in Bell v. Kennedy (Law Rep. 1 H. L., Sc., 320), that domicile is not mere residence, 'it is the relation which the law creates between an individual and a particular locality or country.' The same learned lord, in Udny v. Udny (Law Rep. 1 H. L., Sc. 458), speaking of the acquisition of a residential domicile, said: 'Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time.' According to English law, the conclusion or inference is, that the man has thereby attracted to himself the municipal law of the territory in which he has voluntarily settled, so that it becomes the measure of his personal capacity, upon which his majority or minority, his succession, and testacy or intestacy must depend. the law which thus regulates his personal status must be that of the governing power in whose dominions he resides, and residence in a foreign country, without subjection to the municipal laws and customs, is therefore ineffectual to create a new domicile. Lordships are satisfied that there is neither principle nor authority for holding that there is such a thing as domicile arising from society, and not from connection with a locality." Abd-ul-messih v. Farra, 13 App. Cas. 439, 440, per Lord

Watson, citing In re Tootal's Trusts, 23 Ch. D. 532.

Infants.

"The rule of law is universally recognized that every person, at birth, has his or her domicile in the country or place in which, at the time, the person on whom the infant is legally dependent is then domiciled, whether it be at the place of the birth or elsewhere.

"This domicile of origin, which in case of legitimate children is the domicile of the father, if living, and if not, that of the mother, continues to be the legal domicile of the child, unless changed by the parent during infancy, until he or she, upon attaining majority, or perhaps after being emancipated by the parents, acquires another. During dependency the legal home or place of domicile follows that of its parents, and it is well settled that if both parents be dead the domicile of the child will be that of its origin, or, if that has been changed by the parents, that of its last surviving parent." Van Matre v. Sankey, 148 Ill. 556.

DOMINANT.

The dominant tenement is that tenement to which an easement belongs. Willoughby v. Lawrence, 116 Ill. 19.

DOMINION.

Sovereignty or lordship; as the dominion of the seas. Molloy de Jur. Mar. 91, 92.

Dominion is the right in a corporal thing, from which arises the power of disposition, and of claiming it from others. Coles v. Perry, 7 Tex. 136.

Although the rule is that to set aside a will the undue influence or "dominion" claimed to have been exercised over the mind of the testator must be shown to have been wrongful, it is not error, in an instruction on such subject in a bill to contest a will, to use the quoted word without qualifying it by the word "wrongful" where the instruction contains the qualification that the "dominion" must

go to the extent of depriving the testator of the free exercise of his own judgment, the latter clause supplying the element of wrongfulness which would be lacking were the quoted word used in such connection without qualification. Dowie v. Sutton, 227 Ill. 198.

DONATE.

Generally means giving gratuitously, or without any consideration. Goodhue v. Beloit, 21 Wis. 642.

DONATIO.

Lat. [L. Fr. don, done, doun.] In old English law. A gift of lands or chattels. See Done. Defined by Bracton (and after him, by Fleta), to be a "certain institution, [or established mode of conveyance,] which proceeds from pure liberality and free will, under the compulsion of no law [and has for its object], to transfer a thing to another;" (quædam institutio, quæ ex mera liberalitate et voluntate, nullo jure cogente, procedit, ut rem transferat ad Bract. fol. 11. Fleta, lib. 3, alium). c. 3.

Donatio appears to have been the most ancient mode (as do, dedi, dabo were the most ancient words) of conveying lands, comprehending a gift, grant or feoffment; the latter term signifying nothing more than the gift of a fee (donatio feudi). Co. Litt. 9. Crabb's Hist. Eng. Law, 95. The English "gift" has in modern times been appropriated to signify the conveyance of an estate tail. Bl. Com. 316, 317. But the Latin donatio is constantly used by Bracton in the largest sense, including as well a conveyance in fee simple (simplex et pura). as that which was qualified or conditional (conditionalis or sub modo). Bract. fol. 11, 17.

DONATIO MORTIS CAUSA.

Blackstone's Definition.

A gift made by a person in sickness, or other immediate peril, who, apprehending his dissolution near, delivers, or causes to be delivered, to another, the possession of personal property to keep as his own in case of donor's decease. Hagemann v. Hagemann, 90 Ill. App. 254; see Roberts v. Draper, 18 Ill. App. 171 (quoting part of the definition).

Blackstone has defined it to be "a death-bed disposition of property, where a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered to another the possession of any personal goods, to keep in case of his decease." 2 Bl. Com. 514. And this definition is essentially adopted by Tilghman, C. J., in Wells v. Tucker, 3 Binney's R. 366, 370. It is, however, too narrow in so far as it confines this species of gift to cases of last illness, it being sufficient if the apprehenson of death arise from other causes, as from infirmity, old age, or any external and anticipated danger. Dig. 39. 6. 3. Kent's Com. 444. This is clearly shown by Gibson, C. J., from Justinian's Institutes, and appears also from the Digests, which are followed by Bracton. 2 Wharton's R. 17, 22. Inst. 2. 7. 1. Dig. 39. 5 & 6. Bract. fol. 60. Fleta, lib. 2, c. Calv. Lex. Jurid. 1 White's Lead. 57. Eq. Cases, 614 (Am. ed.).

A donatio causa mortis is sometimes considered as a species of legacy, and it is always accompanied with the implied trust or condition that, if the donor lives, the property shall revert to himself, being given only in contemplation of 2 Bl. Com. 514. 2 Steph. Com. death. 103, note (p), and cases cited ibid. Ward on Legacies, 55, ch. i. sect. iv. Inst. 2. 7. 1. 1 White's Equity Cases, 602, 603. White's Equity Cases, 615 (Am. ed. note, where the American cases are given). It is indispensable to its validity that it be accompanied and perfected by a present delivery of the subject of the gift, according to the manner in which it is capable of being delivered. White's Equity Cases, 604-607. White's Equity Cases, 615-619 (Am. ed.). 2 Kent's Com. 445-448, and notes. See 1 Story's Eq. Jur. §§ 606-607 d.

Donations or gifts of this kind are derived entirely from the civil law, and

were introduced into England as early as the time of Bracton, who closely follows the language of the Digests. Bract. fol. 60. The first reported case on the subject of these gifts, is said to be that of Jones v. Shelby, in 1710. Prec. in Ch. 300.

A donatic causa mortis is where a man lies in extremity, or being surprised by sickness, and not having an opportunity of making a will, but lest he should die before he could make it, gives away personal property with his own hands. If he dies it operates as a legacy. If he recovers, the property reverts to him. Prince v. Hazleton, 20 John. (N. Y.) 514.

It is a conditional gift to take effect only on the death of the donor, who in the meantime has the power of revocation, and may at any time resume possession and annul the gift. Bedell v. Carl et al., 33 N. Y. 584.

A donatio causa mortis is a gift of a personal chattel, made by a person in his last illness, subject to an implied condition, that if the donor recovers, the gift shall be void. So also it shall be void, if the donee dies before the donor. Wells v. Tucker, 3 Binn. (Pa.) 370.

Elements.

A gift, to take effect as a donatic mortis causa, must have been made to take effect in the event of the donor's death by his existing disorder, and there must be an actual delivery of the chattel to the donee, so as to transfer the possession to him, or a delivery to a third person for the benefit of the donee, by which the donor parts with all control over the subject of the gift. Barnes v. People, 25 Ill. App. 139.

A donatio mortis causa must be completely executed, precisely as required in the case of gifts inter vivos, subject to be divested by the happening of any of the conditions subsequent—that is, upon actual revocation by the donor, or by the donor's surviving the apprehended peril or outliving the donee, or by the occurrence of a deficiency of assets necessary to pay the debts of the deceased donor. Williams v. Chamberlain, 165 Ill. 219. To the same effect see Barnum v. Reed,

136 Ill. 398; Martin v. Martin, 68 Ill. App. 176.

To be valid a donatio mortis causa, the act must be a completed and executed gift. Barnum v. Reed, 136 Ill. 398; Martin v. Martin, 68 Ill. App. 176.

There are three requisites necessary to constitute a donatio causa mortis: (1) The gift must be with a view to the donor's death; (2) it must have been made to take effect only in the event of the donor's death by his existing disorder; (3) there must be an actual delivery of the subject of the donation. Williams v. Chamberlain, 165 Ill. 218; Telford v. Patton, 144 Ill. 619; Hagemann v. Hagemann, 90 Ill. App. 254; Roberts v. Draper, 18 Ill. App. 171.

"For an effectual donatio mortis causa three things must combine: first the gift or donation must have been made in contemplation, though not necessarily in expectation, of death; secondly, there must have been delivery to the donee of the subject-matter of the gift; and, thirdly, the gift must be made under such circumstances as shew that the thing is to revert to the donor in case he should recover. This last requirement is sometimes put somewhat differently, and it is said that the gift must be made under circumstances shewing that it is to take effect only if the death of the donor follows." Lord Russell, C. J., in Cain v. Moon [1896], 2 Q. B. 286.

A delivery is indispensable to the valdity of a donatio mortis causa * * * delivery stands in the place of nuncupation, and must accompany and form a part of the gift: an after-acquired possession of the donee is nothing; and a previous and continuing possession, though by the authority of the donor, is no better. Miller v. Jeffress, 4 Gratt. (Va.) 479.

It is essential to such gifts that the donor make them in his last sickness, or in contemplation and expectation of death, and that the apprehension of death may arise from infirmity or old age, or from external and anticipated danger. Dexheimer v. Gautier, 34 How. Pr. R. (N. Y.) 476.

DONATIO INTER VIVOS.

Lat. A gift between the living. The ordinary kind of gift by one person to another. 2 Kent's Com. 438. 2 Steph. Com. 102. A term derived from the civil law. Inst. 2. 7. 2.

An act by which one gives to another irrevocably and gratuitously some property of which he becomes the immediate owner. Fisk v. Flores, 43 Texas 343.

DONATION.

The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration. Ind. N. & S. R. R. Co. v. City of Attica, 56 Ind. 486. A donation, as defined by the civil law, is a contract whereby a person gratuitously dispossesses himself of something by transferring it to another to be his property, who accepts it. It is a contract or agreement, and must be accepted by the donee, otherwise it would be a mere offer. It must also be gratuitous, because otherwise, it would be a sale or exchange. Fisk v. Flores, 43 Texas 343.

DONE.

[Lat. factum, actum.] Distinguished from "made." "A 'deed made' may no doubt mean an 'instrument made;' but a 'deed done' is not an 'instrument done,'—it is an 'act done;' and therefore these words, 'made and done' apply to acts as well as deeds." Lord Brougham, 4 Bell's Appeal Cases, 38. "You do not say 'to do a sale,' so readily as you say 'to make a sale.'" Lord Brougham, 2 Bell's Appeal Cases, 99.

Section 1 of the act of 1874 (J. & A. q 8811), relating to fencing and operating railroads, and making such railroads liable for damage "done" by its agents, engines or cars, to stock which get on the track as a result of a failure to fence as required by the statute, refers, by the quoted word, to a damage caused by actual collision, and does not include a case

where a horse got on the track through a defective fence and becoming frightened by a whistle, or in some other way, jumped a cattle guard or wire fence and was thereby injured. Schertz v. Indianapolis, B. & W. Ry. Co., 107 Ill. 580.

An omission to do something which ought to be done in order to complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to "an act done or intended to be done" within the meaning of a clause requiring a Notice of Action. Jolliffe v. Wallasey, 43 L. J. C. P. 41; L. R. 9 C. P. 62; cited by Privy Council as laying down above definition, in R. v. Williams, 53 L. J. P. C. 71; Va. Wilson v. Halifax, L. R. 3 Ex. 114; 37 L. J. Ex. 44.

DORMANT PARTNER.

One whose name is not known or does not appear as a partner, but who, nevertheless, is a silent partner and partakes of the profits; a partner who both keeps himself concealed and who refrains from any active interference with the business or management of the firm; one whose name is not mentioned in the title of the firm or embraced in some general term, as "company," "sons," etc. Podrasnik v. R. T. Martin Co., 25 Ill. App. 303.

The expression "dormant partner" implies both the qualities of secrecy and inactivity. Podrasnik v. R. T. Martin Co., 25 Ill. App. 303.

A dormant partner is one who takes no part in the business, and whose connection with the business is unknown. Both secrecy and inactivity are implied by the word. National Bank of Salem v. Thomas, 47 N. Y. 19.

A dormant partner, in the legal acceptation of the term, is one who participates in the profits of the trade, but conceals his name. Speake v. Prewitt, 6 Tex. 258...

Every partner is considered dormant, unless his name is mentioned in the firm, or embraced under general terms, as the name of one of the firm or com-

pany. Mitchell v. Dall, 2 Harr. & Gill (Md.) 171.

DORMITORY.

"Dormitory" is defined by lexicographers as "a room, suite of rooms, or building used to sleep in; a bedroom; sleeping quarters or sleeping-house; a lodging-house." Hillsdale College v. Rideout, 82 Mich. 104.

D08.

In old English law. That property or portion which a freeman gave to his wife at the door of the church, in consideration of the nuptials that were about to take place, and the burden of matrimony; and intended for the support of the wife and education of the children, in case the husband should die before her; (id quod liber homo dat sponsæ suæ ad ostium ecclesiæ, propter nuptias futuras et onus matrimonii, et ad sustentationem uxorsis et educationem liberorum, cum fuerint procreati, si vir præ-Bract. fol. 92. Fleta, lib. moriatur). 5, c. 23, § 2. Usually translated dower; and otherwise called by Bracton, dos mulieris secundum consuetudinem Anglicanam; the wife's dower according to the custom of England. Bract. fol. 92 b. 1 Reeves' Hist. 100. See Dos ratonabilis.

The use of this word to signify the dower of the common law, though established by long usage, is, as Spelman has shown, an obvious misapplication. Dos was used in the Roman law, in the opposite sense of a marriage portion. 2 Bl. Com. 129. See supra. Hence, Tacitus remarked it as a singularity among the ancient Germans, that instead of the wife bringing a portion to the husband, the husband conferred it on the wife. Dotem non uxor marito, sed uxori maritus affert. De Morib. Germ. c. 18. Dos was used in the English sense of dower as early as the time of Glanville, though that writer takes notice that in the Roman law it had a different mean-Glanv. lib. 6, c. 1. Bracton coning. stantly employs dos in the sense of dower (sometimes qualifying it as dos

rationabilis and dos mulieris), though he adopts the Roman phrases dos profectitia, dos adventitia, in which dos denoted the reverse of dower. Bract. fol. 92 a, b. The proper Latin word for dower, according to Spelman, is doarium, a term used in that sense in the early continental law of Europe.

Dos, dower, in the common law is taken for that portion of lands and tenements which the wife hath for the term of her life in the lands or tenements of her husband after his decease, for the sustenance of herself and the nurture and education of her children. Sutherland v. Sutherland, 69 Ill. 485.

DOTAGE.

That feebleness of the mental faculties which proceeds from old age. It is a diminution or decay of that intellectual power which was once possessed. It is the slow approach of death; of that irrevocable cessation, without hurt or disease, of all the functions which once belonged to the living animal. Owing's Case, 1 Bland's Ch. (Md.) 389.

DOUAY VERSION.

A version of the Bible, of which the Old Testament was published by the English college at Douay, in France, in 1609, and the New Testament by the English college at Rheims in 1582. People v. Board of Education, 245 Ill. 343.

DOUBLE INSURANCE.

Where one insures the same thing twice over against the same perils. Perkins v. N. E. Marine Ins. Co., 12 Mass. 218.

To constitute a double insurance, the two policies must not only be for the benefit of the same person and on the same subject, but for the same entire risk. Westchester, etc., Co. v. Foster, 90 Ill. 124.

DOUBLE PLEA.

[L. Lat. duplex placitum.] A plea which contains several distinct answers

to the plaintiff's declaration. Steph. Pl. 251, 252. A plea containing several distinct matters in answer to different parts of the declaration, where ether of such matters alone is a sufficient answer to the whole. See Arch. Civ. Pl. 174. A plea containing an averment or denial of several facts, constituting distinct points or defences. 1 Burr. 316. The averment of several facts going to make up one point, will not render a plea double. 1 Smith's Lead. Cas. 249 (Am. ed. note).

A plea setting up two separate defenses, each of which the defendant claims is perfect and complete, is clearly double. Royal Neighbors v. Sinon, 135 Ill. App. 604. See also Duplicity.

DOUBTFUL TITLE.

A doubtful title which a purchaser will not be compelled to accept, is not only a title upon which the court entertains doubts, but includes also a title which, although the court has a favorable opinion of it, yet may reasonably and fairly be questioned in the opinion of other competent persons. Street v. French, 147 Ill. 355; Bauman v. Stoller, 139 Ill. App. 398; Close v. Stuyvesant, 132 Ill. 607, citing Pyoke v. Waddingham, 10 Hare, 1.

"Every title is doubtful which invites and exposes the party holding it to litigation." Speakman v. Forepaugh, 44 Penn. St. 363, followed in Close v. Stuyvesant, 132 Ill. 607.

"Titles may sometimes depend for their validity upon presumptions in reference to some collateral acts, facts or events which perhaps are incapable of proof by direct evidence, and the rule seems to be settled that a title sustained by such a presumption will be held free from doubt, and forced upon a vendee, whenever the circumstances of the case are such that, had it been pending before a jury, the judge would have directed them peremptorily to find the fact in accordance with the presumption; but the title will be held too doubtful to be forced upon the vendee, whenever the circumstances would have been submitted to the jury for them to find in

conformity with or against the presumption." Close v. Stuyvesant, 132 Ill. 607.

"A doubtful title is one which the court does not consider to be so clear that it will enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but only subject to so much doubt that a purchaser ought not to be compelled to accept it." Heller v. Cohen, 36 N. Y. Sup. 671.

DOWELS.

Small pieces of stone which are usually inserted between and into adjoining blocks of stone in order to bind and hold them in place. Steven v. Fidelity, etc., Co., 178 Ill. App. 58.

DOWER.

Defined.

The provision which the law makes for a wife out of the lands and tenements of her husband, for her support and maintenance after his death. Adams v. Storey, 135 Ill. 455.

A title inchoate and not consummate. Sisk v. Smith, 6 Ill. 506.

An estate for life, to which the wife was entitled, on the death of her husband, in the third part of the legal estates of inheritance, in lands and tenements of which the husband was seized, in deed, or in law, in fee simple, or in fee tale, at any time during coverture, and to which any issue which the wife might have had might by any possibility have been heir. Barker v. Smiley, 218 III. 71.

Distinguished from "Dowry."

"The words 'dower,' 'dowery' and 'dowry' are regarded by lexicographers as entymologically different forms of the same word; 'dowry' has become obsolete and 'dower' and 'dowry' have in modern times acquired both in law and in popular use distinct significations." Johnson v. Goss, 132 Mass. 274.

At Common Law.

At the common law, "dower" is the

husband has been seized at any time during the coverture, of such an estate as the children by the wife might by possibility have inherited, and which by the death of her husband such wife is entitled for her life. Sisk v. Smith, 6 Ill. 507.

As Legal Estate.

While the inchoate right of dower cannot be said to be a present interest or estate in lands, it is nevertheless a right fully recognized and protected by the law. Robbins v. Kinzie, 45 Ill. 357.

Origin and Nature.

Its origin, which is of great antiquity, has been the subject of much speculation; so ancient is it that neither Coke nor Blackstone could trace it (Combs v. Young, 4 Yerg. 218). Some authorities refer to Gen. 34:12, where Schechem soliciting Jacob for his daughter Dinah. says: "Ask me never so much dowry and gift and I will give according as ye shall say unto me" (Crabb. Hist. Eng. Law. 79). But this was unlike the dower of today, it being a gift by the suitor to the father or near relative of the bride (Scrib. Dow. 1, 2). Sir Henry Maine attributes its origin to the exertions of the church in its solicitude for the interest wives surviving their husbands (Maine, Ave. Law. 224); but this is doubted by Pollock and Maitland (Pol. & Maitl. Hist. Eng. Law, 1, 426). Sir Martin Wright traces it to the Normans (Wright, Ten. 192). Many authorities agree that its origin lies with the Germans (Greenl. Cruise, Real Prop. 164; Kent. Comm. 4, 34n). Before the Norman conquest it existed only in personalty, but afterwards became solely an interest in land (Wright, Ten. 192; Bl. Comm. 2, 129). It has consisted at different times of different amounts, under the Longovardie Code, a fourth; the Gothic, a tenth; and among the Saxons, a moiety (Greenl. Cruise, Real Prop. 1, 170).

There are five species given by the text writers: (1) dower by custom, where by the custom of any locality the third part of all the lands whereof the | widow was given a particular allotment;

(2) dower ad ostium ecclesiae, where a man about to marry a woman endowed her at the church door, further assignment being unnecessary; (3) dower ex assender partis which was similar to ad ostium ecclesiae except it was made out of lands of the husband's father; (4) dower de la pluis beale, where the wife was required to endow herself of the fairest portion of any lands she might have as guardian in socage; (5) dower by common law, which is the only kind existing in the United States and is where the widow is entitled to one-third of all lands and tenements of which her husband was sole seised in fact or deed at any time during coverture, and which any issue of theirs might directly or indirectly inherit (Litt § 51; Park, Dow. 2; Scrib. Dow. 1, 18). In England since the Act of 3 & 4 Wm. IV. C. 105, the only kinds existing are dower by custom and by common law.

To consummate dower three things are necessary (Stevens v. Smith, 4 Marsh. 64): (1) A valid (Jenkins v. Jenkins, 2 Dana 102) and subsisting (McCraney v. McCraney, 5 Ia. 232) marriage, either de jure or de facto (Fenton v. Reed, 4 Johns. 52). (2) Actual corporeal seisin of the husband or the right to such seisin (Eldredge v. Forrestal, 7 Mass. 253) of an estate of inheritance (Emerson v. Harris, 6 Metc. 475) during the marriage (Leach v. Leach, 21 Hun. 381). Such seisin, which may be seisin in law (Pledger v. Ellerbe, 6 Richards 266) must be sole (Holbrook v. Finney, 4 Mass. 566) beneficial (Greene v. Greene, 1 Ohio 535; King v. Bushnell, 121 Ill. 656) and immediate (Safford v. Safford, 7 Paige 259). The seisin need not be a rightful one (Galbraith v. Green, 13 Sar. & Raw. 85) nor need it remain in the husband any particular length of time (McCraney v. Grimes, 2 Gill & J. 318); but seisin for an instant only where the same act gives the estate to him and then conveys it away from him is not sufficient (Holbrook v. Finney (1808), 4 Mass. 566; Gillam v. Moore, 4 Leigh, 30). (3) Death of the husband, which makes the right absolute (Combs v. Hayne, 4 Yerg. 218; Motley v. Motley, 53 Neb. 375; and which must be a natural and not a civil death (Platner v. Sherwood, 6 Johns. ch. 118) and before which it is a mere possibility or contingent interest and not an estate (Melizet's Appeal, 17 Penna. St. 449; Magee v. Young, 40 Miss. 164). The law in force at the time of his death governs the right (Ware v. Owens, 42 Ala. 212; Bennett v. Harms, 51 Wis. 251).

The widow cannot enter nor can she claim any part of the estate until it is assigned to her (Evans v. Webb, 1 Yeates, 424; Austin v. Austin, 50 Me. 74). Before such assignment her right is a mere chose in action (Heisen v. Heisen, 145 Ill. 658) which cannot be sold on execution (Gooch v. Atkins, 14 Mass. 378; Pennington v. Yell, 11 Ark. 212; Witthaus v. Schack, 105 N. Y. 332). It was provided in Magna Charta that she should tarry forty days after her husband's death in his chief house, which was called her quarantine (Carnall v. Provisions of a Wilson, 21 Ark. 62). somewhat similar nature have been made by statute in some states (Conger v. Atwood, 28 Ohio St. 134; Loyd v. Malone, 23 Ill. 46; Steins. Am. St. Law, § 3271).

There were two methods of assignment: (1) By common right, which was assigned by metes and bounds unless the parties agreed to a different form (Sanders v. McMillian, 98 Ala. 144); (2) against common right which will not bar her claim unless it be by indenture to which she is a party (Covant v. Little, 1 Pick. 189).

For the whole subject of assignment of dower see note to Sanders v. McMillian, 39 Am. St. Rep. 25.

The widow's right may be defeated:
(1) By an ante-nuptial contract which is always regarded with great scrutiny by the courts (Pierce v. Pierce, 71 N. Y. 154; Graham v. Graham, 143 N. Y. 573), and which while not held to be binding in law (Gibson v. Gibson, 15 Mass. 106) will be enforced in equity (Hastings v. Dickinson, 7 Mass. 153; Charles v. Charles, 8 Gratt. 486; Faulkner v. Faulkner, 3 Leigh 255); (2) by divorce a vinculo matrimonium (McCraney v. Mc-

Craney, 5 Ia. 232; Wood v. Wood, 59 Ark. 441; Carr v. Carr, 92 Ky. 552; Price v. Price, 124 N. Y. 589). right or its equivalent is now preserved to her in most states by statute when she is not the guilty party (Van Cleaf v. Burns, 118 N. Y. 549; Tatio v. Tatio, 18 Neb. 395; Forrest v. Forrest, 6 Duer 102; Stein Am. St. Law, § 3246); (3) although adultery was not a bar at common law (Reel v. Elder, 62 Penna. St. 308), elopement and adultery were made so by 13 Edw. I, c. 34 (Bell v. Nealy, 1 Bail. Law, 312; Walters v. Jordan, 35 N. Car. 361; Cogswell v. Tibbetts, 3 N. H. Desertion without adultery has not been held to be a bar (Nye's Appeal, 126 Penna St. 341; Wiseman v. Wiseman, 73 Ind. 112); (4) by jointure which was formerly a very common method and is defined to be a settlement by the husband on his wife, either before or after marriage (Saunders v. Saunders, 144 Mo. 482); and which may be equitable as well as legal (Shaw v. Boyd, 5 Sar. & Raw. 309), although in many states this distinction has been abolished (Scrib. Dow. 2, 395). It was no bar at common law prior to the statute of uses (27 Hen. VIII) since no right could be divested until it accrued (O'Brien v. Elliot, 15 Me. 125; Hastings v. Dickinson, 7 Mass. 153; Gibson v. Gibson, 15 Mass. 106). It must be designed or accepted in lieu of or as the equivalent of dower (Van Orden v. Van Orden, 10 Johns. 30; Swaine v. Perine, 5 Johns. ch. 482) and in states where the statute of uses is in force it must consist of nothing less than a freehold (Gelzer v. Gelzer), 1 Bail Eq. 387; Hastings v. Dickinson, 7 Mass. 153); (5) by release (Lively v. Paschal, 35 Ga. 218) which must be by deed (White v. White, 1 Harrison, 202; Carnall v. Wilson, 21 Ark. 62) and duly acknowledged (Thompson v. Morrow, 5 Sar. & Raw. 289; Gove v. Cather, 23 Ill. 634; Leavitt v. Lamprey, 13 Pick. 382). The usual method in the United States is for the wife to join her husband in the conveyance of his real estate (Grove v. Todd, 41 Md. 633; Nicoll v. Ogden, 29 Ill. 323; Grady v. Corkee, 57 Mo. 172); (6) by alienage at common law of either

the husband or wife (Alsberry v. Hawkins, 9 Dana 177; Kelly v. Harrison, 2 Johns. 29); though in same states now abolished by statute (Priest v. Cummings, 16 Wend. 617); (7) by application of lands to a public use (Simar v. Canaday, 58 N. Y. 298; French v. Lord, 69 Me. 537; Gwynne v. Cincinnati, 3 Ohio 24; Flynn v. Flynn, 171 Mass. 312; Moore v. New York, 8 N. Y. 110; Duncan v. Terre Haute, 85 Ind. 104). If the land is taken during the lifetime of the husband the widow is not entitled to have any portion of the money received paid to her (Flynn v. Flynn, 171 Mass. 312, criticising Wheeler v. Kirtland, 27 N. J. Eq. 534, and In re New York and Brooklyn Bridge, 75 Hun. 558, where the contrary rule was laid down). taken after the death of the husband she has her right in the money paid therefor (Bonner v. Peterson, 44 Ill. 253; In re Hall's Estate (1870), L. R. 9 Eq. 179); (8) by election of the widow to take something in its place, as a provision in his will, which, in order to compel her to elect must manifest the testator's intention that it be in lieu of dower and that if the claim for dower is allowed, the testator's intention in some other direction will be defeated. (Hall's Case, 1 Bland. ch. 203; Church v. Bull, 2 Denio 430: Morrison v. Bowman, 29 Cal. 337; Melizet's Appeal, 17 Pa. St. 449; Bennett v. Packer, 70 Conn. 112; Evans v. Webb, 1 Yeates 424: White v. White, 1 Harrison, 202; Kaes v. Gross, 92 Miss. 647).

At common law there was no dower in equitable estates as it was required that the husband be seized of the legal title (Stevens v. Smith, 4 J. J. Marsh. 64) but this has now been changed in most states (Graham v. Graham, 6 T. B. Mon. 562; Swaine v. Perine, 5 Johns. ch. 482; Snow v. Stevens, 15 Mass. 279; Wing v. Ayer, 53 Me. 138; Hitchcock v. Harrington, 6 Johns. 290).

With partnership property the rule seems established that no dower exists in partnership lands purchased with partnership funds and used for partnership purposes until the partnership debts are paid (Dyer v. Clark, 5 Metc. 265; Divine

v. Mitchum, 4 B. Mon. 488; Willet v. Brown, 65 Mo. 138; Sumner v. Hampson, 8 Ohio 328; Sumney v. Patton, 1 Winst. Eq. 52; Woodward-Holmes Co. v. Nudd, 58 Minn. 236; (Robinson Bank v. Miller, 153 Ill. 54; Wheatley v. Calhoun, 12 Leigh, 264; Greene v. Greene, 1 Ohio 535).

As against the heir, the widow is entitled to the value of the land as of the time of the assignment, whether it be improved or impaired in value (Catlin v. Ware, 9 Mass. 218; Sanders v. McMillian, 98 Ala. 144; Rankin v. Olaphant, 9 Mo. 239). As against the alience of the husband as of the date of the alienation (Thompson v. Morrow, 5 Sarg. & Rawle 289; Gore v. Brazier, 3 Mass. 523; Hale v. James, 6 Johns. ch. 258; Van Doren v. Van Doren, 2 Pennington 697; Waters v. Gooch, 6 J. J. Marsh. 586; Mahoney v. Young, 3 Dana 588; Green v. Tennant, 2 Harr (Del.) 336; Webb v. Townsend, 1 Pick. 21); but if the enhancement arises from other sources than the improvements made by the alienee, she is entitled to the full benefit. Butler v. Fitzgerald, 43 Neb. 192; Mosher v. Mosher, 15 Me. 371; Johnson v. Nandyke, 6 McLean, 422.

Dower is paramount to all conveyances, contracts, incumbrances, debts or liabilities of the husband incurred during coverture. (Ficklin v. Rixey, 89 Va. 832; Lewis v. Smith, 9 N. Y. 502; Combs v. Young, 4 Yerg. 218; Miller v. Farmers Bank, 49 S. Car. 427; Shell v. Duncan, 31 S. Car. 547). It is preferred to a mechanics' lien claim (Gove v. Cather, 23 Ill. 634; Bishop v. Boyle, 9 Ind. 169) but a deed of trust or mortgage is superior when given to secure the payment of the purchase price (Wheatley v. Calhoun, 12 Leigh. 246; Stow v. Tifft, 15 Johns. 458; McCauley v. Grimes, 2 Gill & J. 318; Holbrook v. Finney, 4 Mass. 566). Once vested in the wife it cannot be divested except by her voluntary act performed in the method prescribed by law (Motley v. Motley, 53 Neb. 375; Nicholl v. Ogden, 29 Ill. 323); and all conveyances with intent to defeat her are fraudulent and void (Gilson v. Hutchinson, 120 Mass. 27; Killiger v. Reidenhauer, 6 Sar. & Raw. 531; Thayer v. Thayer, 14 Vt. 107).

The remedies to enforce dower are by writ of dower unde nihil habet and writ of right of dower (Waters v. Gooch, 6 J. J. Marsh. 536). Equity has concurrent jurisdiction with courts of law, but if the title is in controversy it must be settled at law (Blunt v. Gee, 5 Call, 481; Swaine v. Perine, 5 Johns ch. 482; Osborne v. Horine, 17 Ill. 92). In some states the Orphans Court has jurisdiction (Stern. Am. St. Law, § 3272).

The whole subject of dower has been much altered by statute from that existing at common law. In some states it has been abolished altogether but in these the widow is given a share by descent or the intestate laws which resembles dower. In the states preserving it she generally has a right to elect between her common law dower and the provision made by will. In some states as Illinois and Maine for example, both the husband and wife are endowed as at common law. See Stim. Am. St. Law, § 3200-3300.

See in general 2 Bl. Comm. 129-140; Greenl. Cruise. Real Prop. 1, 170-219; 4 Kent Comm. 35-85; Scribner, Dower; Park, Dower; Cameron, Dower; Washburn, Real Prop., §§ 355-519.

"A right of dower in a married woman, before it has become consummate by the death of her husband, is a mere intangible, inchoate, contingent expectancy, and not only is not an estate in land, but does not even rise to the dignity of a vested right." Goodkind v. Bartlett, 136 Ill. 20, citing Blain v. Harrison, 11 Ill. 384; Robbins v. Kinzie, 45 Ill. 354; Johnson v. Montgomery, 51 Ill. 185.

Homestead Estate.

"The homestead estate must contribute to the dower,—that is, that the widow, in cases * * * where there have been lands other than those comprised within the homestead, can not take the homestead and have the equivalent of one-third of the entire estate assigned her as dower out of the residue, but is endowable of one-third of the residue, after deducting the homestead, only." Jones v. Gilbert, 135 Ill. 34.

DOWER BY CUSTOM.

A kind of dower in England, regulated by custom, where the quantity allowed the wife differed from the proportion of the common law; as that the wife should have half the husband's lands, or, in some places, the whole; and in some, only a quarter. 2 Bl. Com. 132. Litt. sect. 37.

DOWN.

"In this case the boundary begins at a post standing on the north bank of the creek, and it returns to a post also standing on the 'north bank of Cattaraugus creek,' and proceeds 'thence down the same, and along the several meanders thereof, to the place of beginning.' * * It is claimed that 'down the same,' in this description, means down the bank, and not down the creek. But we think this is not the fair construction of the language. The words more obviously refer to the creek, which is the immediate antecedent, than to the bank. And again, the phrase, 'along the meanders thereof,' is more descriptive of the windings of the stream than of the irregularities or sinuosities of the bank." Seneca Nation v. Knight, 23 N. Y. 500.

DOWRY.

That which the wife gives the husband on account of marriage, and is a sort of donation made with a view to his maintenance and to the support of the marriage. Cutler v. Waddingham, 22 Mo. 254.

DOYLE'S RULE.

Doyle's rule for the measurement of logs is to deduct four inches from the diameter of the log, as an allowance for slab; square one-quarter of the remainder and multiply the result by the length of the log in feet. Morrison v. Pickrell Walnut Co., 199 Ill. App. 175.

DRAFT.

An order drawn by one person upon another for a sum of money, and would embrace a check for money. Culter v. Reynolds, 64 Ill. 324.

DRAIN.

The word "drain" as used in the Levee Act (J. & A. ¶¶ 4376 et seq.), is broad enough to include sewers. Charleston v. Johnston, 170 Ill. 341.

The power which a highway authority has, under s. 67, 5 & 6 W. 4, c. 50, to make and cleanse "ditches, gutters, drains or watercourses," does not extend to a dumbwell or shaft into which surface-water is conducted by pipes, and from which it percolates away through the subsoil. Croft v. Rickmansworth, 58 L. J. Ch. 14; 4 Times Rep. 706. It was there conceded that such a dumbwell was not a "ditch" or "gutter;" but the contention was that it was a "drain or watercourse;" but in deciding in the negative Cotton, L. J., said, "I do not think the verb 'to drain' has anything to do with it." Fry, L. J., said, "I think 'a drain or watercourse' is applied to that sort of conveyance by which you direct the course of the water, and where you can follow the course of the water, and where you can correct any mischief which arises from an impediment to a flow of the water, where you can do the repairs;" and Lopes, L. J., said, "I understand by a 'drain' something conducting liquid away, and into and through which liquid may continuously pass."

The word "drain" in P. H. Act, 1875, means "Any drain of and used for the drainage of one building only" (s. 4); Vh. Acton v. Batten, 54 L. J. Ch. 251; 28 Ch. D. 283; 52 L. T. 17; 49 J. P. 357.

DRAINAGE DISTRICT.

A local subdivision of the state created by law for the purpose of administering therein certain functions of local government. People v. Hepler, 240 Ill. 199.

The organization of a sub-district of a drainage district is not the organization of a new drainage district, the sub-district being a mere subdivision of the larger work for convenience in the management of the work, and not an independent municipal organization. Sny

Island, etc., District v. Boyd, etc., District, 273 Ill. 540.

DRAMATIC PERFORMANCE.

"The dramatic performances which are recognized as belonging to a theater, are those adapted to the stage, with the appropriate scenery for their representation. The stage with its machinery and appurtenances, forms an essential element in the definition of the term 'the-A circus, on the other hand, has no stage, but a ring; and the performances are of a character that can take place in the circle; in the absence of the stage and its appurtenances. They may both be arranged under the general term 'amusements,' but differ from each other as one species differs from another under the same genus. It may often be difficult to trace the dividing line between the terms theater and circus from the character of their exhibition, but there can be none whatever in distinguishing the difference between the usual performances of a theater and an exhibition of feats of sleight of hand or legerdemain. The latter cannot be said to be a dramatic performance, in any legitimate sense of that term." State, 22 Ala. 74.

DRAMATIC PIECE.

By s. 2 of the Copyright Act, 1842 (5 & 6 V. c. 45), a "dramatic piece" means, "every tragedy, comedy, play, opera, farce, or other scenic, musical or dramatic entertainment." "These words comprehend any piece which could be called dramatic in its widest sense; any piece which, on being presented by any performer to an audience, would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience." Per Denman, C. J., Russell v. Smith, 17 L. J. Q. B. 225; 12 Q. B. 217. Scenes and dresses are not essential to a "dramatic piece;" in such a composition as Mackay's Song of "The Ship on Fire" when sung with considerable expression was, in the case quoted, held to be a "dramatic piece." But in Wall v. Taylor,

a composition called "Will o' the Wisp," the part of which that was called dramatic being a verse in which the performer departs from ordinary melody, and, in the words of the composition, "laughs, ha! ha! and laughs, ho! ho!" at which parts of the song some risibility by the performer ought to be indulged in, the judge (Day, J.), said that whether it was a "dramatic piece" was a question for the jury, but that that phrase would probably not include a performance where the performer merely exerted his vocal powers and did not resort to gesture or facial expression to endeavor to move the emotions of his audience: there the jury found that "Will o' the Wisp" was not a "dramatic piece" (Times 10 June, 1882): But it was obviously a "musical composition," and, being copyright, its unauthorized performance gave a right to the penalty provided by s. 2, 3 & 4 W. 4, c. 15, though it was not performed at a "place of dramatic entertainment;" for that condition attaches only to the representation of a dramatic piece and not to the performance of a musical composition. Wall v. Taylor, 51 L. J. Q. B. 547; 52 Ib. 558; 11 Q. B. D. 102: Duck v. Bates, 53 L. J. Q. B. 97, 338; 12 Q. B. D. 79.

A pantomime is a "dramatic entertainment" within s. 2, 3 & 4 W. 4, c. 15. Lee v. Simpson, 16 L. J. C. P. 105; 3 C. B. 871; 4 D. & L. 666.

To constitute a song a dramatic piece, within the meaning of a copyright statute defining a dramatic piece to include "every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment," it must be such a song as for its proper representation, acting, and possible scenery, form a necessary ingredient; and it is not sufficient that the performer chooses to accompany an ordinary commonplace song with adventitious effects of costume, etc. Fuller v. Blackpool, etc., Pavilion Co., Ltd. [1895] 2 Q. B. 429.

DRAMSHOP.

Places commonly known as tippling houses, where liquors are sold in small

quantities for immediate use upon the premises, that use being the drinking of the liquor at the time and place of purchase. Strauss v. Galesburg, 203 Ill. 241.

A shop or bar-room where spirits are sold by the dram. Malkan v. Chicago, 217 Ill. 479.

A "dramshop," as defined by the statute, within the meaning of the Dramshop Act, is a place where spirituous or vinous or malt liquors are retailed by less quantity than one gallon. Dramshop Act, § 1, ¶ 4600; South Shore Club v. People, 228 Ill. 81; Malkan v. Chicago, 217 Ill. 479; Strauss v. Galesburg, 203 Ill. 240; Hewitt v. People, 186 Ill. 342; Hansberg v. People, 120 Ill. 23; Wright v. People, 101 Ill. 129; Chicago v. Malkan, 119 Ill. App. 545; Feldman v. Morrison, 1 Ill. App. 464.

Statutory Definition Not Exclusive.

The definition of "dramshop" given in section 1 of the Dramshop Act (J. & A. ¶ 4600), is merely broad enough to cover the provision of the statute as to the evil at which the act is aimed, and is not intended to restrict municipalities in their classification of the liquor business for purposes of regulation and license. Strauss v. Galesburg, 203 Ill. 241.

Club House Included.

A club house where intoxicating liquors are dispensed to members is a "dramshop," within the meaning of that term as defined in section 1 of the Dramshop Act (J. & A. ¶ 4600), although the club makes no profit on the liquor sold, and although it is organized in good faith for social purposes, and not as a shift or device to evade the provisions of the act. South Shore Club v. People, 228 III. 82.

DRAWING.

A representation of objects made with a point, such as pen, pencil or crayon. Atchinson v. McKinnie, 233 Ill. 111.

The term "drawings" may include an incomplete sketch. Atchison v. McKinnie, 233 Ill. 111.

DRINKS.

Milk Included.

A concession for a restaurant providing that a certain percentage of the gross receipts from the sale of "drinks" be pald as compensation for the concession includes under "drinks" milk sold in individual glasses and not as part of a meal with eatables. Merle v. Beifeld, 194 Ill. App. 385.

DRIP.

[Lat. stillicidium.] A species of servitude derived from the civil law, by which one man engages to permit the waters flowing from the roof of his neighbor's house to fall [or drip] on his estate. 3 Kent's Com. 436. 2 Hilliard's Real Prop. 85.

DRIVER.

A "rider" of a horse or beast is included in the word "driver," in the penal clause of 5 & 6 W. 4, c. 50, s. 78. Williams v. Evans, 1 Ex. D. 277; 41 J. P. 151; 35 L. T. 864: over-ruling R. v. Bacon, 11 Cox, C. C. 540.

DRIVING.

The propulsion of a bicycle by a person seated on, and carried by it, is "driving a carriage" within the same section. Taylor v. Goodwin, 4 Q. B. D. 228; 48 L. J. M. C. 104; 27 W. R. 489; 43 J. P. 653.

DROIT D'ANGARIE.

Angary, or Droit d'Angarie, is a contingent belligerent right, arising out of necessity of war, to dispose over, use and destroy, if need be, property belonging to neutral states. Encyc. Brit. XXXI, 129 (Neutrality).

A case given in the text-books as

* * one of angary during the same
[Franco-German] war was the temporary seizure and conversion to war purposes of Swiss and Austrian rolling-stock in Alsace, without any apparent military

necessity. Encyc. Brit. XXXI, 129 (Neutrality).

Angaria (from the Greek, a messenger), a post station. The French word hanger or shed is probably of the same origin.

DROITS OF ADMIRALTY.

Rights or perquisites of the admiralty. A term applied to goods found derelict at sea. 1 Robinson's Adm. Rep. 32. 2 Kent's Com. 357, note. Applied also to property captured in time of war, by noncommissioned vessels of a belligerent nation. 1 Kent's Com. 96.

DROP.

An appliance for breaking scrap iron, consisting of a metal ball, raised about fifteen feet by means of a derrick and allowed to fall. Supolski v. Ferguson, etc., Co., 272 Ill. 84.

DRUG.

"Webster defines a drug as including any mineral substance used in chemical operations; and the court cannot say, that as matter of law benzine is not included in that term [and therefore covered by a policy insuring a stock in trade consisting of groceries, drugs and medicines, etc.]." Carrigan v. Lycoming Fire Ins. Co., 53 Vt. 426.

"In our opinion the evidence shows that benzine kept in the quantities and for the purposes that the proof shows that it was kept by plaintiffs [i.e., in bottles containing from two to six ounces each, to be sold for the purpose of cleaning gloves] was included in the terms 'drugs' and 'chemicals,' used in describing the property insured, and that the company intended to insure such benzine." Phoenix Ins. Co. v. Flemming, 65 Ark. 59.

DRUG STORE.

The term "drug store," as used in the act of 1911 (J. & A. ¶¶ 7413 et seq.),

construed to mean a shop, store or other place of business where drugs, medicines or poisons are compounded, dispensed or sold at retail. Act of 1911, § 3 (J. & A. ¶7415).

DRUGGIST.

"Druggist" properly means one whose occupation is to buy and sell drugs without compounding or preparation. term therefore has a much more limited and restricted meaning than the word "apothecary." State v. Holmes, 28 La. Ann. 767.

DRUMMER.

One who sells to retail dealers or others by sample. Emmons v. City of Lewistown, 132 Ill. 384; Olney v. Todd, 47 Ill. App. 440; Twining v. Elgin, 38 Ill. App. 361.

One whose business is to canvass and take orders for future delivery of books or other commodities. Twining v. Elgin, 38 Ill. App. 361.

The term "drummer" has acquired a common acceptation, and is applied to commercial agents who are travelling for wholesale merchants and supplying the retail trade with goods, or rather taking orders for goods to be shipped to the retail merchant. Singleton v. Fritsch, 4 Lea (Tenn.) 96.

DRUNKARD.

He is a drunkard whose habit is to get drunk, "whose ebriety has become habitual." Com. v. Whitney, 5 Gray (Mass.) 86.

As for a drunkard, he is voluntarius daemon; he hath no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it. Pirtle v. The State, 9 Humph. (Tenn.) 665; quoting Co. Inst. 247.

DRUNKEN PERSON.

The offense of selling intoxicants to a "drunken person" under s. 13, Licensknown as the Pharmacy Act, is to be ing Act, 1872 (35 & 36 V. c. 94), is committed by a sale to a person who is drunk, although he show no indications of insobriety, and neither the license-holder nor his servants notice that he is drunk. Cundy v. Le Cocq, 53 L. J. M. C. 125; 13 Q. B. D. 207.

DRUNKENNESS.

Defined.

The state of being drunken, or over-powered by alcoholic liquor; intoxication; inebriety; the condition of a man whose mind is affected by the immediate use of intoxicating drinks; disorder of the mind occasioned by the recent use of intoxicating liquor. Youngs v. Youngs, 130 Ill. 234.

Common Meaning.

The word "drunkenness" is commonly understood to mean the result of the excessive drinking of intoxicating liquors; it is "ebriety," "inebriation," "intoxication," all of which words are nearly synonymous, and expressive of that state or condition which inevitably follows from taking into the body, by swallowing or drinking, excessive quantities of such liquors. Youngs v. Youngs, 130 Ill. 234.

Divorce Act.

The term "drunkenness," used in section 1 of the Divorce Act (J. & A. ¶ 4215), relating to causes of divorce, is used in its ordinary and usual sense, and means that intoxication which results from the excessive drinking of alcoholic liquor. Youngs v. Youngs, 33 Ill. App. 224.

As Excuse for Crime.

"Very many cases may be found, but these citations will suffice to show the rule at common law. It will be observed that all the cases hold, as our statute provides, that drunkenness is not an excuse for crime, and yet the uniform holding is that where a particular intent is charged, and such intent forms the gist of the offense, as contradistinguished from the intent necessarily entering into every crime—as, where one crime is thereby aggravated into a higher crime, or a misdemeanor enlarged into a felony,

—any cause which deprives the defendant of the mental capacity to form such an intent will be a defence to the graver crime." Crosby v. People 137 Ill. 342.

"As to the artificial, voluntarily contracted madness, by drunkenness or intoxication, which deprives men of their reason and puts them into temporary frenzy, our law looks upon this as an aggravation of the offense rather than an excuse for any criminal behavior. The law, considering how easy it is to counterfeit this excuse, and how weak an excuse it is, though real, will not suffer any man thus to privilege one crime by another." Crosby v. People, citing 1 Black. Comm. 26, 137 Ill. 341.

Gross and Confirmed.

"Drunkenness cannot fairly be said to be gross and confirmed if, at the time the libel is filed, the character of the use of the intoxicant or drug has ceased for some length of time, so that it may fairly be found that the condition required by the statute no longer exists." Burt v. Burt (1897), 168 Mass. 208.

DUE.

Defined.

Owed, as a debt; that ought to be paid, or done to or for another; payable; owing and demandable; proper; suitable. Elkins v. Wolfe, 44 Ill. App. 380.

"The word 'due' has more than one signification, or is used on different occasions to express distinct ideas. At times it signifies a simple indebtedness without reference to the day of payment. * * * At other times it shows that the day of payment or render has passed." Scudder v. Coryell, 5 Halst. (N. J.) 345.

Broadest Sense.

That which is just and proper. Elkins v. Wolfe, 44 Ill. App. 380.

Narrow Sense.

What ought to be paid; what may be demanded. Elkins v. Wolfe, 44 Ill. App. 380.

As Owing But Not Demandable.

A debt may be "due," in the sense that it is owing, although not at that time demandable. Elkins v. Wolfe, 44 Ill. App. 381.

A debt is still "due" notwithstanding that the Stat. of Limitations may have run against it, for that statute only bars the remedy and does not extinguish the debt; and in an Account asked for by the debtor he cannot avail himself of the statute (Ex p. Cawley, 34 S. J. 29).

A debt is often said to be due from a person, where he is the party owing it, or primarily bound to pay, whether the time for payment has, or has not arrived. Story, J. 6 Peters' Rep. 29, 36. Wharton's Lex. See Debitum.

Covenant on Assignment of Judgment.

A covenant in an assignment of a judgment that a certain amount is "due" on said judgment does not amount to an express warranty that the judgment is impregnable to attack, but is merely a covenant that the judgment has not been paid or released. Hinkley v. Champaign National Bank, 216 Ill. 566.

As Meaning "Earned."

On a weekly hiring, wages are not "due" to a child, young person or woman, within s. 11, Employers and Workmen Act, 1875, until the end of the week; secus, of piece-work to be paid for weekly: "due" in this section means "earned." Warburton v. Heyworth, 50 L. J. Q. B. 137; 6 Q. B. D. 1, distinguishing Gregson v. Watson, 34 L. T. 143.

As Payable.

Where articles give a company a lien upon a shareholder's shares for any moneys "due" from him, that means "presently payable," and gives no lien for a current bill. Re Stockton Iron Co., 45 L. J. Ch. 168; 2 Ch. D. 101.

"That a fund is due when the time arrives in which payment is enforceable

* * is the ordinary meaning of the word [due]." Jasper Township v. Sheridan Township, 47 Ia. 184.

DUE AND OWING.

An obligation can be said to be "due and owing," within the meaning of section 5 of the Garnishment Act (J. & A. ¶ 5940), relating to the interrogatories to be propounded to garnishees, only when it is of such a character that the debtor may and ought to discharge it at once by payment, which can only be done where the amount is ascertained, or capable of being ascertained by computation. Capes v. Burgess, 135 Ill. 67.

Where a liability consists of damages which are unliquidated, and uncertain in amount, and can be rendered certain only by the judgment of a court, such claim is not "due and owing," within the meaning of section 5 of the Garnishment Act (J. & A. ¶ 5940), relating to interrogatories to be propounded to garnishees. Capes v. Burgess, 135 Ill. 67.

Notwithstanding the Apportionment Act, 1870 (33 & 34 V. c. 35, s. 2), a testamentary direction to forgive a tenant "all rent or arrears of rent which may be due and owing from him at the time of my decease," only extends to the rent due at the quarter-day immediately preceding the testator's death. Re Lucas, 55 L. J. Ch. 101; 54 L. T. 30.

DUE AND PROPER CARE.

That degree of care which the law requires under a given state of circumstances. Schmidt v. Sinnott, 103 Ill. 165.

There is no substantial difference between the meaning of the expressions "due and proper care" and "ordinary care," as used in instructions in actions for personal injuries. Schmidt v. Sinnott, 103 Ill. 165.

DUE CARE.

Defined.

The care demanded under the circumstances. Chicago, R. I. & P. Ry. Co. v. Hamler, 215 Ill. 534.

That degree of care that a reasonable and prudent person would exercise under all the circumstances of the case. Mendota v. Fay, 1 Ill. App. 421.

"Due care was defined to be that kind and degree of care which a person of ordinary prudence and care would exercise in the same place, and under the same circumstances, and at the same time." Hilton v. Boston, 171 Mass. 480 quoting the charge of the trial judge and affirming it.

"Negligence" is the opposite of "due care." Where due care is found, there is no negligence. If there is a want of due care than there is negligence. Raymond v. Portland R. Co., 100 Me. 535.

"Due care regarding its use (fire) is defined by Mr. Cooley as 'a degree of care corresponding to the danger and requires circumspection, not only as to time and place of starting it, but in protecting against its spread afterwards." Needham v. King, 95 Mich. 306 quoting Cooley, Torts, 590.

As Applied to Children.

The term "due care," when applied to a child, means that degree of care which a child of his age, intelligence, capacity, discretion and experience would naturally and ordinarily use in the same situation and under the same circumstances. Burke v. Waterman, 187 Ill. App. 440.

DUE CARE AND CAUTION.

The expression "due care and caution," as applied to the duties of parties in actions for personal injuries, is a relative term, the meaning of which depends on all the conditions and circumstances surrounding the person when called on to act, in the determination of which such questions as the age, defective senses, or other infirmity of the party are material. Rosenthal v. Chicago & A. R. Co., 255 Ill. 560.

DUE CAUSE.

The "due cause" which has to be shown for the removal of an official liquidator (s. 93, Comp. Act, 1862), is not confined to objections personal to the liquidator, but extends to any cause which renders it desirable, in the interest of the company or the creditors, that the liquidator should be removed and another person substituted; and therefore a duly secured offer by a disputed creditors to pay in full the undisputed creditors

of an insolvent company if his nominee be appointed official liquidator, is "due cause" for removing an official liquidator already appointed, and appointing such nominee instead. Re Adam Eyton, Lim., 36 Ch. D. 299; 57 L. J. Ch. 127; 3 Times Rep. 738.

And probably that rule would be applied to the interpretation of "due cause" as used in s. 141 of the same Act. No doubt Sir John Moore Co. (12 Ch. D. 325) decided that, under the latter section, "due cause shown" was not equivalent to "if the Court shall think," and pointed to some unfitness of the liquidator to be removed thereunder; yet the Court there said that they used the word "unfitness" "in a wide sense of the term." And as it seems difficult to read "due cause" differently in s. 141 from the way in which it is used in s. 93, it would seem that there would be an unfitnesspersonal unfitness,-in retaining a liquidator under s. 141 if so doing would be inimical to the interests of the Company or its creditors. In that way, it is submitted, the two cases cited will stand together, and that both are applicable for determining what is "due cause" under each of the sections referred to (Buckl. 294, 295).

DUE COURSE OF ADMINISTRA-TION.

Administration Act.

A judgment against an administrator providing that the claim be paid in "due course of administration" means that it be paid as, and pro rata with, other claims of the class in which it is fixed by section 70 of the Administration Act (J. & A. ¶119), out of the assets administered. McCall v. Lee, 120 Ill. 266; Darling v. McDonald, 101 Ill. 377.

A direction in a Will that on the death of a life tenant without children, a fund is to be disposed of "in a due course of administration" does not, on the event happening, give the fund to the next-of-kin according to the statute, but the fund falls into the residue. Scott v. Moore, 13 L. J. Ch. 283; 14 Sim. 35; Wms. Exs. 1129.

DUE COURSE OF LAW.

Means such rules of action in relation to the rights and duties of the citizen, and such forms and modes of legal proceedings, of a general character, to ascertain and enforce duties, rights and remedies, as the legislature may deem fit, and which are not forbidden by the language or the spirit of other parts of the constitution. Griffin v. Mixon, 38 Miss. 458.

Due course of law, when applied to the prosecution of a demand in a court of record, confessedly means no more than a timely and regular proceeding to judgment and execution. Backus v. Shipherd, 11 Wend. (N. Y.) 635.

DUE DILIGENCE.

As Applied to Duty of Attaching Officer.

The expression "due diligence," as applied to the duty of a marshal having a vessel under attachment, means such diligence as a careful and prudent man, of reasonable sense and judgment, might reasonably be expected to use if the property belonged to himself. Jones v. McGuirk, 51 Ill. 387.

Negotiable Instruments Act.

The "due diligence" required of the holder of a negotiable instrument by section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624) in order to charge an assignor, does not consist in merely instituting suit against the maker and prosecuting it to judgment, but in using, within the county where the suit was commenced, all the means which the law furnished to collect the money. Bestor v. Walker, 9 Ill. 13; Saunders v. O'-Briant, 3 Ill. 371.

- "Reasonable Diligence" Referred to.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders, means reasonable diligence, such diligence as a prudent man would exercise in the conduct of his own affairs. Dillman v. Nadelhoffer, 160 Ill. 126; Hamlin

v. Reynolds, 22 Ill. 210; Nixon v. Weyhrich, 20 Ill. 605; Barlow v. Cooper, 109 Ill. App. 383. To the same effect see Judson v. Gookwin, 37 Ill. 299.

The "due diligence" required by section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624) to be used by the holder of a negotiable instrument against the maker in order to fix liability upon an assignor, is such diligence as would characterize the course of every reasonable man seeking to protect his own interest, where no ulterior recourse upon any one else than the maker remained to him. Bestor v. Walker, 9 Ill. 13.

Requires Pursuit of Ordinary Remedies.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders, requires that the diligence must be complete, and such as the ordinary remedies of the law afford, so that where an execution is issued and its return relied on as evidence of diligence, the execution must have been in the hands of the officer for the entire period of its life. Hamlin v. Reynolds, 22 Ill. 211. To the same effect see Saunders v. O'Briant, 3 Ill. 370.

— Requires Suit Against Maker.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶7624), relating to the liability of assignors to holders, requires that the suit brought be against the maker in order to charge the assignor. Booth v. Storrs, 54 Ill. 477.

— Requires Suit at First Term.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶7624), relating to the liability of assignors to holders, requires that the holder institute legal proceedings against the maker at the first term after maturity, and prosecute it to judgment at the earliest period within his power, and issue execution without delay. Robinson v. Olcott, 27 Ill. 184. To the same effect see Sherman v. Smith,

20 Ill. 352; Bestor v. Walker, 9 Ill. 12; Brown v. Pease, 8 Ill. 192.

-Requires Suit in This State.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders, requires that the suit brought against the maker be brought in the courts of this state, and does not require the holder to go into a foreign jurisdiction to pursue his remedy against the maker. Booth v. Storrs, 54 Ill. 478. See also Schuttler v. Piatt, 12 Ill. 419 (holding that the rule is the same although the maker always resided in a foreign state).

- Necessity for Suit in Justice Court.

A holder of a negotiable instrument does not use "due diligence," within the meaning of section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders, by bringing and prosecuting a suit against the maker at the first term of the circuit court after maturity, whereby the judgment was delayed a year or more, during which time the maker became insolvent, where it appears that by proceeding against the maker in a justice's court judgment could have been obtained in season to be satisfied before such insolvency. Allison v. Smith, 20 Ill. 106.

- Place of Suit.

The "due diligence" required by section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624) to be used by the holder of a negotiable instrument against the maker in order to fix liability upon an assignor, does not require the holder to institute suit and send execution to every county in the state, but to institute and prosecute suit in the county of the maker's residence, if known to the holder, and if not, in the county where the note was executed, if the maker can be found there for the purpose of service. Bestor v. Walker, 9 Ill. 14.

— Judgment and Return Nulla Bona Sufficient.

The diligent and honest prosecution of a suit to judgment, with a return nulla

bona, constitutes "due diligence," within the meaning of section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders. Judson v. Gookin, 37 Ill. 298.

Unavailing Issue of Execution Not Required.

The "due diligence" required by section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), to be used by the holder of a negotiable instrument against the maker in order to fix liability on an assignor does not require the holder, after seasonably obtaining judgment against the maker, to issue execution thereon where such execution would have been unavailing. Bestor v. Walker, 9 Ill. 12.

- Garnishee Process Not Required.

The requirement of section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), that in order to charge an assignor a holder must use "due diligence" to collect of the maker, does not require the holder to resort to garnishee process to collect debts due the maker unless there is evidence that the holder was aware of the existence of such debts. Pierce v. Short, 14 Ill. 147.

— Requires Full Satisfaction Where Possible.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders, requires not only a prosecution of suit against the maker to judgment, but to satisfaction as well, so that the statute is not complied with by a return of partial satisfaction where there is evidence that the maker possessed sufficient property to make it possible to satisfy the execution in full. Nixon v. Weyhrich, 20 Ill. 605.

- Proof in Bankruptcy Not Required.

The expression "due diligence," used in section 7 of the Negotiable Instruments Act (J. & A. ¶7624), relating to the liability of assignors to holders, does not require the holder to prove his claim

in bankruptcy against the maker in order to charge the assignor. Booth v. Storrs, 54 Ill. 477.

Mixed Question of Law and Fact.

The question whether the holder of a negotiable instrument has used "due diligence," within the meaning of section 7 of the Negotiable Instruments Act (J. & A. ¶ 7624), relating to the liability of assignors to holders, to fasten liability on the maker of such instrument, is a mixed question of law and fact. Dillman v. Nadelhoffer, 160 Ill. 128.

Collection of a Debt.

Due diligence, in the effort to collect a debt by the owner thereof with whom another has contracted to collect it failing success after due diligence on the owner's part, is reasonable diligence, such diligence as a prudent man would exercise in the conduct of his own affairs. Dillman v. Nadelhoffer, 160 Ill. 121, citing Nixon v. Weyhrich, 20 Ill. 600; Judson v. Gookwin, 37 Ill. 286.

To show diligence by suit, the assignee or holder must institute legal proceedings against the maker at the first term after maturity of the note, and must obtain judgment and issue execution as soon as possible. Dillman v. Nadelhoffer, 160 Ill. 121, citing Bestoe v. Walker, 4 Gilm. 3; Robinson v. Olcott, 27 Ill. 181; Voorhies v. Atlee, 29 Iowa, 49; 1 Brand Sur. and Guar. § 101.

Under Bill of Lading.

The owner of a ship has not exercised due diligence to make the vessel seaworthy, within the meaning of a bill of lading exempting him, if he exercises such diligence, from liability for damage or loss resulting from faults or errors in navigation or in the vessel's management, where he has employed a competent carpenter through whose negligence the vessel goes to sea in an unseaworthy condition. Dobell v. Steamship Rossmore Co. Ltd. [1895] 2 Q. B. 408.

Ingurance.

The measure of what constitutes "due

within the meaning of the quoted expression as used in a policy of accident insurance, is not necessarily what an ordinarily prudent person would do for his own safety under the circumstances, but what a person in the exercise of reasonable care might do under such circumstances. Tinsman v. Commercial, etc., Ass'n, 235 Ill. 639.

Covenant.

A covenant to do a thing "with all due and reasonable diligence and despatch," is not excused from performance if it can be done; although the jury find that it cannot be done by any reasonable application of labour, diligence, skill, money or other means. Jervis v. Tomkinson, 26 L. J. Ex. 41; 1 H. & N. 195.

DUE OBLIGATION.

"An obligation can be said to be due only when it is of such character that the debtor may and ought to discharge it at once by payment," in Capes v. Burgess, 135 Ill. 67.

DUE OR TO BECOME DUE.

"The expression, 'rent to become due,' as used in the condition [if the recognizance which makes it apparent that defendants were sued as tenants, and binds them to the payment of rent due and to become due], can only be understood to mean 'intervening rent.'" Martin v. Campbell, 120 Mass. 130.

"The 'debts due or to become due' [in a statute providing that the garnishee shall stand liable to the plaintiff to the amount of the personal property, belonging to defendant, etc., and the amount of his own indebtedness to the defendant then due, or to become due], evidently relates to such as the garnishee owes absolutely, though payable in the future." Foster v. Singer, 69 Wis. 394.

"The money which is exempted from * * * it will be oblegal seizure served is particularly designated; it is 'any sum of money due or to become due to any pensioner.' This refers, of course, diligence" for the safety of an insured, | to money due or becoming due from the pension department; it is not pretended that the language of the statute can have any wider application than this." Rozelle v. Rhodes, 116 Pa. St. 134.

DUE PROCESS OF LAW.

In General.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, does not mean a statute passed for the purpose of working the wrong. Frorer v. People, 141 Ill. 181.

An act of the legislature which transfers the property of one man to another without his consent operates to deprive such person of his property without "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870. Burdick v. People, 149 Ill. 605.

Proceedings Included.

The expression "due process of law," used in section 2 of the Constitution of 1870, does not mean statutes passed by the legislature, but certain fundamentai rights which our system of jurisprudence has always recognized, and extends to every governmental proceeding which may interfere with personal or property rights, whether the process be legislative, judicial, administrative or executive. People v. Strassheim, 242 Ill. 366.

No Definition Invariably Applicable.

Although the expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, has been often defined, it is doubtful if any definition affords a test which will enable the courts to determine, in every instance, whether or not any particular statute is in violation of the provision. Commissioners v. Smith, 233 Ill. 424. To the same effect see Nelson v. Chicago, B. & Q. R. Co., 225 Ill. 208.

"Law of the Land" Synonymous.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, is synonymous with the expression "law of the land," used in Magna Charta. Chicago v. Gage, 268 Ill.

243; Klafter v. Examiners of Architects, 259 Ill. 19; People v. Strassheim, 242 Ill. 366; Off v. Morehead, 235 Ill. 44; Belleville v. St. Clair County, etc., Co., 234 Ill. 435; Commissioners v. Smith, 233 Ill. 424; Green v. Red Cross, etc., Co., 232 Ill. 620; People v. Rose, 207 Ill. 369; Booth v. People, 186 Ill. 50; Eden v. People, 161 Ill. 303; Harding v. People, 160 Ill. 464; Board of Education v. Blodgett, 155 Ill. 446; Ritchie v. People, 155 Ill. 105; Burdick v. People, 149 Ill. 605; Braceville, etc., Co. v. People, 147 Ill. 70; Frorer v. People, 141 Ill. 181; Millett v. People, 117 Ill. 301; Polar Wave, etc., Co. v. Illinois, etc., Society, 155 Ill. App. 314; Rhinehart v. Schuyler, 7 Ill. 522.

The expression "due process of law," as used in the fifth amendment to the Constitution of the United States, refers to the law of the land in each state which derives its authority from the inherent and reserved power of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of our civil and political institutions. Rothschild v. Steger, etc., Co., 256 Ill. 207.

the various constitutions, phrases "due process of law" and "the law of the land" are interchangeable and synonymous. They mean general public law, binding upon all members of the community, and not partial or private laws, affecting the rights of private individuals or of classes. Harding v. People, 160 Ill. 459, citing Cooley Const. Linn. 353; Millett v. People, 117 Ill. 294; Jones v. Reynolds, 2 Texas 251; Wyenheimer v. People, 13 N. Y. 432; Vanzandt v. Waddell, 2 Yerg. 269; Trover v. People, 141 Ill. 171; Braceville Coal Co. v. People, 147 Ill, 66.

"The phrase is synonymous with 'law of the land,' and 'the law of the land' is 'general public law, binding upon all the members of the community, under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals.'" Eden v. People, 161 Ill. 303, citing Millett v. People, 117 Ill. 294.

"Due process of law is process due according to the law of the land." Carle-

ton v. Rugg, 149 Mass. 563 quoting Walker v. Sauvinet, 92 U. S. 90, 93.

Refers to General Public Law.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, has reference to a general public law of the land. Booth v. People, 186 Ill. 48.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, means a general law administered in its regular course according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike. Sheldon v. Hoyne, 261 Ill. 225; Klafter v. Examiners of Architects, 259 Ill. 18; People v. Apfelbaum, 251 Ill. 27; Off v. Morehead, 235 Ill. 44.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, refers to general public law, binding upon all members of the community under all circumstances, and not to partial or private laws, affecting only the rights of private individuals or classes of individuals. Eden v. People, 161 Ill. 303; Harding v. People, 160 Ill. 464; Ritchie v. People, 155 Ill. 105; Braceville, etc., Co. v. People, 147 Ill. 70; Frorer v. People, 141 Ill. 181; Millett v. People, 117 Ill. 301. To the same effect see Bailey v. People, 190 Ill. 34 (quoting the same definition, with the addition of the expression "legally enacted," as characterizing the general public law).

Discriminatory Legislation Excluded.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, means general public law, without discrimination. Chicago v. Gage, 268 Ill. 243.

An enactment which deprives one class of persons of the right to acquire and enjoy property, or to contract in relation thereto, in the same manner as others under like conditions and circumstances are permitted to acquire and enjoy property or contract with relation to it, is not comprehended within the true meaning of the expression "due process of

law," used in section 2 of article 2 of the Constitution of 1870. Bailey v. People, 190 Ill. 34.

Refers to Statute of General Operation.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, refers to a statute general in its operation and affecting in the same way all persons similarly situated. Josma v. Western, etc., Co., 249 Ill. 514.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, refers to laws operating uniformly under general rules applicable to all parties. Green v. Red Cross, etc., Co., 232 Ill. 620.

Valid Enactments as.

Valid enactments of the legislature constitute "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870. Christy v. Elliott, 216 Ill. 40; Bailey v. People, 190 Ill. 34; Booth v. People, 186 Ill. 48.

Invalid Enactment Excluded.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, does not mean a proceeding pursuant to any law which the legislature may see fit to pass, whether valid or invalid. Commissioners v. Smith, 233 Ill. 424; People v. Rose, 207 Ill. 368; Burdick v. People, 149 Ill. 605; Board of Education v. Bakewell, 122 Ill. 348.

Purpose of Guaranty.

The provision in section 2 of article 2 of the Constitution of 1870 as to "due process of law" is designed to protect and preserve the rights of the citizen against arbitrary legislation as well as against arbitrary executive or judicial action. People v. Strassheim, 242 Ill. 366. To the same effect see Klafter v. Examiners of Architects, 259 Ill. 19.

"Due process of law," referred to in section 2 of article 2 of the Constitution of 1870, is that principle of law intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. Belleville v. St. Clair, etc., Co., 234 Ill. 435.

As Exertion of Governmental Power.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, means such an exertion of the power of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. Harrigan v. Peoria County, 262 Ill. 47; People v. Chicago, etc., Co., 261 Ill. 394; Klafter v. Examiners of Architects, 259 Ill. 19; Commissioners v. Smith, 233 Ill. 424.

Judicial Proceedings.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, has reference to judicial proceedings according to the course and usage of the common law. Nelson v. Chicago, B. & Q. R. Co., 225 Ill. 208; People v. Rose, 207 Ill. 369; Campbell v. Campbell, 63 Ill. 464; Citizens H. Ry. Co. v. Belleville, 47 Ill. App. 407.

"Proceedings in a court of justice to determine the personal rights and obligations of parties, over whom that court has no jurisdiction, do not constitute due process of law." Bickerdike v. Allen, citing: Pennoyer v. Neff, 95 U. S. 714; Bickerdike v. Allen, 157 Ill. 102.

Judicial Proceedings Not Necessarily Referred to.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, does not necessarily mean judicial proceedings. Sheldon v. Hoyne, 261 Ill. 225; Klafter v. Examiners of Architects, 259 Ill. 18; People v. Apfelbaum, 251 Ill. 27; People v. Strassheim, 242 Ill. 366.

Refers to Due Course of Legal Proceedings.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, means in the due course of legal proceedings according to the rules and forms which have been

established for the protection of private rights. Belleville v. St. Clair, etc., Co., 234 Ill. 435; Commissioners v. Smith, 233 Ill. 424; Flannery v. People, 225 Ill. 72; People v. Rose, 207 Ill. 369; Burdick v. People, 149 Ill. 605; Board of Education v. Bakewell, 122 Ill. 348; Polar Wave, etc., Co. v. Illinois, etc., Society, 155 Ill. App. 314.

Requires Notice and Hearing.

The expression "due process of law," used in the fourteenth amendment to the Constitution of the United States, includes, as applied to judicial proceedings, a charge before some judicial tribunal, and notice to the party in some form, either actual or constructive, and an opportunity to appear and produce evidence in his defense and be heard by himself or counsel. People v. Sullivan, 126 Ill. App. 396. To the same effect see People v. Cohen, 219 Ill. 204.

To be "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870, a proceeding must always be based on notice. Campbell v. Campbell, 63 Ill. 464.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard and to defend, enforce or protect his rights. Carbondale v. Wade, 106 Ill. App. 664.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, requires not only that notice of the proceeding be given, but that the party be heard in his defense, so that a judgment pronounced without judicial determination of the facts which can alone support such judgment is as much wanting in "due process of law," within the meaning of the Constitution, as though the party proceeded against received no legal summons. Hultberg v. Anderson, 252 Ill. 615.

Notice of Each Step in Proceeding Not Required.

The expression "due process of law," used in section 2 of article 2 of the Con-

stitution of 1870, does not mean that a person shall have special notice of every step that is taken in any given proceeding before the court can proceed, or that the same notices or character of notices shall be given in every lawsuit. People v. Chicago, etc., Co., 261 Ill. 394.

Requires Summons or Appearance.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, requires the service of summons in the manner provided by law, or a voluntary general appearance. American, etc., Co. v. Peoria, etc., Co., 154 Ill. App. 335.

Jury Trial.

The expression "due process of law," used in section 2 of article 2 of the Constitution of 1870, does not require a jury trial in matters of contempt. People v. Kipley, 171 Ill. 70.

"It has been declared repeatedly that the phrase 'due process of law' does not of itself require a trial by jury in states where the usage and statutes are otherwise." Dowdell, petitioner, 169 Mass. (1897) 387, citing Montana Co. v. St. Louis Mining Co., 152 U. S. 160, 171. Hurtado v. People, 110 U. S. 516; Walker v. Sauvinet, 92 U. S. 90.

Rule of Federal Supreme Court.

The expression "due process of law," used in the fifth amendment to the Constitution of the United States, does not require that every judgment rendered by a state tribunal under which one may be deprived of life, liberty or property shall be in accord with the decisions of the Supreme Court of the United States, except in those cases wherein that court is charged with the duty of declaring and expounding the "supreme law of the land." Rothschild v. Steger, etc., Co., 256 Ill. 207.

Appeal.

"An appeal simply means a second hearing; and if one hearing is not due process of law, doubling it cannot make it so." Montana Co. v. St. Louis Min. & Mill. Co., 152 U. S. 171.

Public Legal Proceeding as.

Any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised, in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves the principles of liberty and justice, must be regarded as "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870. Klafter v. Examiners of Architects, 259 Ill. 19; Rothschild v. Steger, etc., Co., 256 Ill. 207.

Local Option Act as.

A dramshop keeper is not deprived of property without "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870, by reason of the operation of the act of 1907 (J. & A. ¶¶ 4637 et seq.), known as the Local Option Act. People v. McBride, 234 Ill. 178.

Summary Statutory Proceeding as.

A person is not deprived of his liberty without "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870, by a summary proceeding for contempt under section 13 of article 2 of the act of 1885, now section 13 of article 2 of the act of 1899 (J. & A. ¶4956), relating to elections in cities. Sherman v. People, 210 Ill. 560.

Tax Sale as.

A sale of land for taxes is "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870. Owners of Lands v. People, 113 Ill. 314.

Assessment of Damages After Default as.

The assessment of damages without the interposition of a jury after default is "due process of law," within the meaning of section 2 of article 2 of the Constitution of 1870. Pedersen v. Sorensen, 162 Ill. App. 522.

DUE RETURN.

Means a proper return, made in proper time. Waugh v. Brittain, 4 Jones Law (N. C.) 470.

Due return means the bringing the process into court, with such endorsements on it as the law requires. Whether the endorsement be true or false, if it be such an one as the law requires, it is a true return. Harman v. Childress, 3 Yerg. (Tenn.) 329.

DUE WARNING.

Since the only signals required by law to be given by railroad trains approaching a crossing are the sounding of a whistle or the ringing of a bell, and these signals are the only warning which the law requires to be given, an instruction in an action for personal injuries sustained in a collision at such a crossing that the duty of the railroad in such case is to give "due warning" is erroneous as tending to lead the jury to understand the quoted expression to mean more than the law requires. Chicago & A. R. Co. v. Robinson, 106 Ill. 146.

DULY.

Regularly; upon a proper foundation, as distinguished from mere form. See 15 Mees. & W. 465, 469.

The word duly means, in a proper way, or regularly, or according to law. Gibson v. People, 5 Hun (N. Y.) 543.

Qualifying Word.

When used before such words as "convened," "arrested," "qualified," "served," "presented," "discharged," and many others, the word "duly" has the meaning of "legally," "properly," or "according to law." O'Donnell v. People, 224 Ill. 222.

Used Before Word Implying Action.

The word "duly" has acquired a fixed legal meaning, and when used before any word implying action, means that the act was done properly, regularly and according to law. People v. Pennington, 267 Ill. 48; O'Donnell v. People, 224 Ill. 221.

Sheriff "Duly Arrested," means that the Sheriff duly acted under authority enabling him, and was not a trespasser. Butcher v. Stewart, 12 L. J. Ex. 391; 11 M. & W. 857.

A clause in a Lease provided for its forfeiture if the lessee should be "duly found and declared a bankrupt;" the lessee committed an act of bankruptcy and was found and declared a bankrupt, but the petitioning creditors were A. & B., whereas they should have been A. B. & C.; held, by Pollock, C. B. and Platt, B. (Parke, B., diss.), that the lessee was not "duly" found and declared bankrupt. Doe & Lloyd v. Ingleby, 15 M. & W. 465.

Raises Conclusion of Law.

"The word 'duly,' when used in a complaint, is generally a conclusion of law. Stott v. Chicago, 205 Ill. 291.

DULY ADMONISHED.

A record on appeal showing that after a plea of guilty defendant was "duly admonished" by the court shows conclusively that the court fully explained to defendant the consequences of entering such a plea, that being the only caution or advice which the law required the court to give defendant at that time. People v. Pennington, 267 Ill. 48.

DULY CALLED AND HELD.

An election to select a school house site, of which notice was not given, is not an election "duly called and held," within the meaning of the third proviso of paragraph 5 of section 127 of the Schools Act (J. & A. ¶10148), relating to the powers of boards of education. Southworth v. Board of Education, 238 Ill. 198.

DULY CERTIFIED.

"The warrant states that the demand of the governor of California for the fugitives was accompanied by a copy of said affidavit, duly certified as authentic." It would have been a literal compliance with the statute if it had stated that said copy was certified as authentic by the governor of the state of California. But the statement that it was 'duly certified as authentic' must mean that it was certified according to law; that is, that it was certified by the governor or chief magistrate of the state of California, as it could not have been duly certified by any other authority." Ex parte Stanley, 25 Tex. Civ. Ap. 378.

DULY ORGANIZED.

"Under a statute providing that a corporation is not 'deemed duly organized' until after the issue by the Secretary of State of a certificate of the complete organization of the corporation, such due organization is not completed before the recording of the certificate in a book for that purpose in the office of the recorder of deeds of the county where the principal office of such company is located." Loverin v. McLaughlin, 161 Ill. 425, citing § 18 of the general Incorporation act of the State.

DULY PRESENTED.

Presented according to the custom of merchants, which necessarily implies an exception in favor of those unavoidable accidents which must prevent the party from doing it within the regular time. Schofield v. Bayard, 3 Wend (N. Y.) 491.

DULY RECORDED.

Recorded in compliance with the requirement of law. Dunning v. Coleman, 27 La. Ann. 48.

DUNNAGE.

Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to keep them from bruising and injuring each other. Great Western Ins. Co. v. Thwing, 13 Wal. 674.

DUPLICATE.

A document which is the same, in all respects, as another instrument from which it is indistinguishable in its essence and operation. Hayes v. Wagner, 220 Ill. 260.

Sometimes defined to be the copy of a thing; but, though generally a copy, a duplicate differs from a mere copy, in having all the validity of an original. Nor. it seems, need it be an exact copy. Defined also to be the counterpart, of an instrument; but in indentures there is a distinction between counterparts executed by the several parties respectively, each party affixing his or her seal to only one counterpart, and duplicate originals each executed by all the parties. 7 Man. & Gr. 91, note. See 2 Man. & Gr. 518, note. And see Counterpart. The old indentures, charters, or chirographs, seem to have had the character of duplicates.

It has been held that if the statute requires a "duplicate" to be filed with the secretary of state, it is not sufficient to file a certified copy of the articles as recorded in the county clerk's office. On the other hand, it has been held that if a duplicate is required to be filed with the secretary of state, the original need not be filed, but a copy is sufficient. 1 Fletcher Cyclopedia Corporations 436.

Under school law of 1857, authorizing Auditor of Public Accounts, upon certain proof furnished, to issue in lieu of a patent for land, which had been lost or destroyed, "a duplicate copy thereof," it is not necessary that such copy should have affixed to it the seal of state, to render it admissible in evidence for the same purposes for which the original might have been offered. Jackson v. Berner, 48 Ill. 203.

That which is doubled, or twice made; an original instrument repeated. A document which is the same as another, in all essential particulars. Tindal, C. J. 7 Man. & Gr. 93. Maule, J. Man. & Gr. 94.

The term "duplicate" means a document which is essentially the same as some other instrument. Toms v. Cuming, 7 Man. & Gr. (49 Eng. C. L.) 94.

Duplicate is a document which is the

same in all respects as some other document, from which it is indistinguishable in its essence and in its operation. Lewis v. Roberts, 103 Eng. C. L. 29.

"A duplicate is the double of anything. (Bov. Law Dict.) It is either one of the two originals, both of which are executed by the same party or parties"-. Mc-Cuaig v. City Savings Bank, 111 Mich. 358.

DUPLICATE TAXATION.

"By duplicate taxation [in the sense of unequal and therefore inadmissible taxation] is understood the requirement that one person or any one subject of taxation shall directly contribute twice to the same burden while other subjects of taxation belonging to the same class are required to contribute but once." Cool. Tax. 225.

DUPLICITY.

As Fault in Pleading.

"Duplicity" is a fault in pleading, only, because it tends to useless prolixity and confusion, and is therefore only a fault in form. Chicago W. D. Ry. Co. v. Ingraham, 131 Ill. 665.

Duplicity, in a declaration, consists in joining, in one and the same count, different grounds of action, of different natures, or of the same nature, to enforce only a single right of recovery. Chicago W. D. Ry. Co. v. Ingraham, 131 Ill. 665.

A plea is demurrable for duplicity if it contains two distinct matters, either of which would bar the action, and each of which requires a separate answer. Louisville, N. A. & C. Ry. Co. v. Carson, 169 Ill. 255.

In Criminal Pleading.

To be "duplicity," in criminal pleading, there must be joined in the same count different, separate and distinct crimes, committed at different times. People v. Israel, 269 Ill. 287; Waters v. People, 104 Ill. 547.

Where the act charged in the indictment is but one act, fully completed at the same time, as in larceny, there can be no duplicity, however many or differ- | constitute "duress." Mitchell v. Mitchell,

ent kinds of property are stolen. Waters v. People, 104 Ill. 547.

DURESS.

Defined.

That degree of severity, either threatened or impending, or actually inflicted, which is sufficient to overcome the mind and will of a person of ordinary firmness. Schwartz v. Schwartz, 29 Ill. App. 526.

In its more extended sense, it means that degree of constraint or danger either actually inflicted, or threatened and impending, which is sufficient in severity or in apprehension, to overcome the mind and will of a person of ordinary firmness. Brown v. Pierce, 7 Wal. (U. S.) 214.

Control of Faculties.

One in his right mind and in full control of his faculties, who understands what he is doing and has full power to sign a paper or to refuse to do so, does not sign such paper under "duress." Bonney v. Bonney, 237 Ill. 460; Kerting v. Hilton, 152 Ill. 663.

Per Minas.

"Duress per minas" exists when a person is induced to perform an act to avoid a threatened and impending calamity. Christensen v. People, 114 Ill. App. 69.

Compulsion Preventing Voluntary Act.

To constitute "duress," the acts complained of must be such compulsion affecting the mind of the person whose acts are sought to be avoided, as to prevent the act from being voluntary. Mitchell v. Mitchell, 267 Ill. 249; Huston v. Smith, 248 Ill. 402; Hintz v. Hintz, 222 Ill. 252; O'Brien v. People, 216 Ill. 371; Brower v. Callender, 105 Ill. 100; McAldon v. Van Alstine, 135 Ill. App. 398; Christensen v. People, 114 Ill. App. 69; Schwartz v. Schwartz, 29 Ill. App. 527.

Vexation or Annoyance.

Mere annoyance or vexation does not

267 Ill. 249; Huston v. Smith, 248 Ill. 400; Hintz v. Hintz, 222 Ill. 253; Hagan v. Waldo, 168 Ill. 649; Rendleman v. Rendleman, 156 Ill. 573; Brower v. Callender, 105 Ill. 100.

Mere vexation annoyance and threats of imprisonment for which there is no ground, and threats of criminal prosecution, do not constitute duress, where no proceeding has been commenced and no warrant issued. Rendelman v. Rendelman, 156 Ill. 568; L. & P. Assn. v. Holland, 63 App. 58.

Annoyance Producing Insanity.

Annoyance, worry and vexation may amount to "duress," where there results therefrom a state of insanity which existed at the time of the act sought to be avoided. Hagan v. Waldo, 168 Ill. 649; Rendleman v. Rendleman, 156 Ill. 573; Brower v. Callender, 105 Ill. 100.

Mere Threats.

Mere threats of criminal prosecution do not constitute "duress," when a warrant has not been issued, or proceedings commenced. Huston v. Smith, 248 Ill. 400; Rendleman v. Rendleman, 156 Ill. 572.

One against whom a warrant is issued, but who is not arrested, and who voluntarily goes to a justice's office, where he agrees to a judgment, although the justice offers to hold a trial, is not acting under "duress," although the town attorney threatens other prosecutions for the same offense unless he consents to the judgment. Baldwin v. Murphy, 82 Ill. 489.

Mere threats of imprisonment for which there is no ground do not constitute "duress." Huston v. Smith, 248 Ill. 400; Rendleman v. Rendleman, 156 Ill. 572.

Lawful Imprisonment.

Where "duress" is claimed as a result of a lawful imprisonment, it must be shown how the imprisonment was made to operate upon and influence the mind of the party by constraint to assent to and do acts contrary to right and justice, and this may be done by showing a false and groundless demand, or a charge of

crime for which the party may be arrested, and forced to do the act sought to be avoided, in order to obtain his release. Taylor v. Cottrell, 16 Ill. 95.

Illegal Imprisonment.

In order to show "duress" by imprisonment, an unlawful imprisonment, or an abuse of or oppression under lawful process or legal detention, must be proved. Taylor v. Cottrell, 16 Ill. 94. To a similar effect see Schwartz v. Schwartz, 29 Ill. App. 526.

Restraint.

To make out the defense of "duress" it must appear that the party's action has been influenced by the restraint. Schwarts v. Schwarts, 29 Ill. App. 527.

Threat of Civil Suit.

The threat of civil proceedings is not sufficient to constitute duress. McAldon v. Van Alstine, 135 Ill. 398.

It is not "duress" for one who has, or thinks he has, a demand against another, to tell that person that unless he complies with the demand suit will be brought against him and reports of the fact circulated, if no illegal means or fraud is used, even though the threat be made at a time when the person whose acts are sought to be avoided is running for public office where the election is likely to be close in any event, and when the publication of the reports may have a tendency to cause his defeat. McAldon v. Van Alstine, 135 Ill. App. 398.

Bona Fide Pursuit of Legal Redress.

Where the plaintiff or prosecutor is bona fide pursuing legal redress of private wrongs, or a protection from public wrongs, and the defendant assents to a just satisfaction as a consideration of a release, this shall not be intended as "duress" to avoid the act. Taylor v. Cottrell, 16 Ill. 95. To a similar effect see Schwartz v. Schwartz, 29 Ill. App. 527.

Interference with Free Enjoyment of Rights.

To constitute "duress," such a pressure must be brought to bear upon the

person whose acts are sought to be avoided as to interfere in some way with the free enjoyment of his rights or person or property. Rendleman v. Rendleman, 156 Ill. 572; Stover v. Mitchell, 45 Ill. 217.

Levy on Real Estate.

The levy of an execution on real estate does not constitute "duress" on the owner so as to warrant setting aside a conveyance made to compromise the levy. Stover v. Mitchell, 45 Ill. 217.

Fear of Life or Bodily Harm.

To constitute "duress," the person whose acts are sought to be avoided must have been at the time of the acts in fear of life or bodily harm. Huston v. Smith, 248 Ill. 402; Hintz v. Hintz, 222 Ill. 253; Hagan v. Waldo, 168 Ill. 649.

Charge of Crime.

Duress is sufficiently shown where it appears that an innocent person, charged with crime by a lawyer in whom he regards as a friend, executes instruments to avoid a prosecution for the crime. Kronmeyer v. Buck, 258 Ill. 597.

As Question of Fact.

In the case of an imprisonment, claimed to constitute "duress," the motive and intention of the plaintiff or prosecutor, or other person who may use, or seek to use, the process of the law or the imprisonment as a means, motive or consideration to influence, and the degree of influence thereby exercised on the party, are to be taken together, and from the whole the question of "duress" is to be determined as a conclusion of fact. Taylor v. Cottrell, 16 Ill. 95.

The question whether one whose acts are sought to be avoided on the ground of "duress" was coerced or acted willingly, and the conclusion of coercion is not a necessary or unavoidable one from the fact of unlawful restraint. Schwartz v. Schwartz, 29 Ill. App. 527.

DURING.

In the time of; in the course of; throughout the continuance of. Saunders v. Fox, 178 Ill. App. 311.

A contract for goods, to be shipped "during" specified months, implies a continuous act of shipping (per Lord Hatherley, Bowes v. Shand, 46 L. J. Q. B. 561; 2 App. Ca. 455.

An exception in a Charter-Party of Restraint, &c., "During the said Voyage," does not apply at the loading port. Crow v. Falk, 15 L. J. Q. B. 183; 8 Q. B. 467: but this case disapproved in Bruce v. Nicolopulo, 11 Ex. 134.

DURING COVERTURE.

Means while the marriage lasts. State v. Fry, 4 Mo. 159.

There is frequently great difficulty in construing the words "during the coverture" when those words occur in an antenuptial marriage settlement and the wife. at the time of the marriage, is possessed of other property than that mentioned in the settlement. The question whether such other property is or is not comprised in the words is one the determination of which depends very much on the circumstances of each case and especially on the context. "The authorities seem to be such, upon the whole, as tend to show that the settlement should be taken to apply only to property which should come in futuro to the wife, and not to that which was hers before" (per Ld. Blackburn, Williams v. Mercier, 54 L. J. Q. B. 154; and his lordship there points out how easily a word or two may make all the difference). But in the same case (p. 152, Ib.) Selborne, L. C., makes the observations:--"Then-i.e. following where the covenant comprises property which the husband shall become entitled 'in her right'-the question would be, whether the words, 'at any time during her now intended coverture' would apply. Surely you cannot exclude from the duration of the coverture the first moment of its continuance. The moment that the marriage is complete by the performance of that which makes the parties husband and wife, that moment the coverture begins; and if at that moment he becomes entitled as her husband, in her right, I am totally unable to say that it is not during the intended coverture in a sense

which the words will rightly, grammatically and reasonably bear." Williams v. Mercier, 54 L. J. Q. B. 148; 10 App. Ca. 1; 52 L. T. 662; 33 W. R. 373; 49 J. P. 484, wh. V. for a discussion of the cases on this point; see Williams v. Mercier distinguished, Re Garnett, 33 Ch. D. 300. Vf. Re D'Estampes, 53 L. J. Ch. 1117.

DURING GOOD BEHAVIOR.

While conducting oneself comformably to law. United States v. Hrasky, 240 Ill. 564.

DURING HER NATURAL LIFE.

A will apparently devising a fee simple, but qualifying the devise with the words "during her natural life" has the effect, by the quoted expression, of cutting down the estate devised to a life estate. Boyd v. Strahan, 36 Ill. 362.

DURING HER WIDOWHOOD.

A devise or bequest to a wife "during her widowhood," is a gift for life only, which may be terminated by a second marriage of the widow. Kratz v. Kratz, 189 Ill. 280; Mulberry v. Mulberry, 50 Ill. 68.

DURING SUCH TRIAL.

Includes all proceedings had in empanneling the jury, the introduction of evidence, the summing up of counsel, the charge of the court to the jury, receiving and recording the verdict. Maurer v. The People, 43 N. Y. 3.

DURING THE TERM.

As applied to an office means the time or period for which the officer is elected. People v. Burbank, 12 Cal. 392.

In a covenant in a Lease, "'During the said term' means during the whole term expressed to be granted, and not merely during the actual continuance of the term (Evans v. Vaughan, 4 B. & C. 261; 6 D. & R. 349: Williams v. Burrell, 1 C. B.

402; 14 L. J. C. P. 98; 9 Jur. 282); although it is otherwise where the covenant is implied by law." Woodf. 678.

DURING THE TERM OF HER NATURAL LIFE.

A deed granting land "during the term of her natural life" limits the grant to a life estate. Radebaugh v. Radebaugh, 266 Ill. 200.

DURING THE TIME AFORESAID.

A bond given by a divorced husband to secure the payment of alimony to his wife as long as she remains unmarried, and conditioned that payments be made to the wife each three months "during the time aforesaid" designates a continuous period, during which payment is to be made, and not a mere limit at which payment is to cease. Storey v. Storey, 125 Ill. 611.

DURING THEIR CONTINUANCE IN OFFICE.

Section 25 of article 6 of the Constitution of 1870, prohibiting any change in the salaries of judges in Cook county "during their continuance in office" refers to the term, and not to the individual, so that where a judge resigns during the term, the salary of the person appointed to serve the remainder of the term cannot be changed before its expiration. Foreman v. People, 209 Ill. 573.

DUSTY.

Although the term "dusty," used in an instruction, is not necessarily synonymous with "charged with dust," used in clause g of section 20 of the Miners Act of 1899, now clause m of section 14 of the Miners Act (J. & A. ¶7488), relating to the duties of the operator of a mine in regard to passageways, etc., yet where a later instruction of the word of the statute are used, the two instructions, read together, correctly state the law. Davis v. Illinois, etc., Co., 232 Ill. 291.

DUTIES.

Things due and recoverable by law. The term, in its widest signification, is hardly less comprehensive than "taxes." It is applied, in its most restricted meaning, to customs; and in that sense is nearly the synonym of "imposts." Pacific Ins. Co. v. Soule, 7 Wall. (U. S.) 445.

DWELL,

A corporation dwells in the place where its business is done. Bristol v. Chicago & A. R. Co., 15 Ill. 437.

To "dwell," "dwelling," are expressions nearly equivalent to "reside," "residence." A person may "dwell" in two or more places (Butler v. Ablewhite, 28 L. J. C. P. 292); and a member of parliament residing in London for about 3 months in the year would "dwell" there, as well as at his country seat (Bailey v. Bryant, 28 L. J. Q. B. 86; 1 E. & E. 340). A man can, however, scarcely be said to "dwell" at his place of business (Kerr v. Haynes, 29 L. J. Q. B. 70: Shields v. Rait, 18 L. J. C. P. 120; 7 C. B. 116); still less in a prison in which he may be temporarily incarcerated (Dunston v. Paterson, 28 L. J. C. P. 97; 5 C. B. N. S. 267). But a corporation can only "dwell" where it carries on business (Taylor v. Crowland Gas Co., 24 L. J. Ex. 233; 11 Ex. 1; 3 W. R. 368); but that means the principal place where the business of the corporation is carried on,e.g. the Great Western Ry. Co. "dwells" at Paddington and not at every station on its lines of railway. Adams v. G. W. Ry., 30 L. J. Ex. 124; 6 H. & N. 404; 9 W. R. 254. Va. Shiels v. G. N. Ry., 30 L. J. Q. B. 331; 9 W. R. 739.

A manufacturing joint-stock company "dwells and carries on business" within s. 74, County Courts Act, 1888, at its place of manufacture and sale, and not at the registered office of the company. Keynsham Lime Co. v. Baker, 33 L. J. Ex. 41; 2 H. & C. 729: Aberystwith Promenade Pier Co. v. Cooper, 35 L. J. Q. B. 44: Baillie v. Goodwin, 33 Ch. D. 605.

DWELLING HOUSE.

Temporary Absence.

A dwelling house does not cease to be such, within the meaning of section 36 of the Criminal Code (J. & A. ¶ 3522), defining burglary, though its occupants are temporarily absent, as in such case the intention to return is the controlling consideration. Schwabacher v. People, 165 Ill. 626.

Room in Hotel.

A room in a hotel in which a person dwells may be a "dwelling house" within the meaning of section 36 of division 1 of the Criminal Code (J. & A. ¶ 3522), defining burglary. People v. Carr, 255 Ill. 209.

What Constitutes.

"A dwelling-house now includes any part of a dwelling-house which is separately occupied, whether there is or is not a joint occupation of some other part of the house * * It is not necessary that there shall be an actual structural severance." Per Ah. Smith, J. Allchurch v. Hendon Union [1891] 2 Q. B. 436, citing Kirby v. Biffin, 8 Q. B. D. 195. Law Rep. 6 C. P. 327.

"By the definition given in the Parliamentary and Municipal Registration Act, 1878, § 5, a 'dwelling-house' includes 'any part of a house where that part is separately occupied as a dwelling' * * In my opinion, in order that the occupation may come within the definition * *, it must not be subject to disabilities substantially unconsistent with the ordinary rights which a man exercises in respect to his own dwelling." Lopes, L. J. in Cluttebuck v. Taylor, [1896] 1 Q. B. 401.

The term "dwelling-house" in a statute forbidding burials within a certain distance does not include the curtilage. Wright v. Wallasay Local Board, 18 Q. B. D. 783.

"I do not think that * * * a bank or a manufactory or a warehouse becomes a dwelling-house [within the meaning of a statute (Income Tax Act. 5 & 6 Vict. C. 35, § 100, Sched. D.) dis-

allowing the rent or value of any dwelling-house to be deducted in ascertaining the profits on which Income Tax is to be paid] because some servant of the trader resides in that building for the purposes of the trade." Loed Herschell in Town and County Bank, 13 App. Cas. 427.

A "dwelling-house" is obviously a house with the super-added requirement that it is dwelt in or the dwellers in which are absent only temporarily, having animus revertendi and the legal ability to return (Ford v. Barnes, 55 L. J. Q. B. 24). "House" and "dwelling-house" are used in their respective meanings in the Acts conferring the parliamentary franchise,—"house" in § 27, Reform Act, 1832, and "dwelling-house" in § 3, subsec. 2, Rep. People Act, 1867. The latter Act gives the franchise to one who for the prescribed time has been an "inhabitant occupier, as owner or tenant, of any dwelling-house." The word "inhabitant" here would seem to bring out more fully the meaning of the word "dwellinghouse."

A public-house in which a man has taken up his temporary abode (he having no other place of abode) is, semble, his "dwelling-house" within s. 6 (d), Bankry. Act, 1883 (Holroyd v. Gwynne, 2 Taunt. 176), and certainly, for the purpose of this section, a "dwelling-house" need not be an entire house, or a dwelling self-contained, or on a vertical plane as distinguished from a horizontal;—rooms which furnish a separate dwelling and are not mere lodgings, will suffice. Re Hecquard, W. N. (89) 187; 34 S. J. 96.

"Dwelling-house" in New River Co.'s Act, 1852, s. 35, means "any house which is so far adapted for the purposes which a dwelling-house is usually adapted to, as to require water for domestic purposes; and it is not necessary that all the house should be so adapted." Per Cotton, L. J., Cooke v. New River Co., 57 L. J. Ch. 385; 38 Ch. D. 56; 58 L. T. 830; affd. in H. L. 14 App. Ca. 698.

A Covenant prohibiting user otherwise than as a "private dwelling-house," would be broken by keeping the premises as an hotel or lodging-house; because although either would be a dwelling-house after a fashion, neither would be private. Rolls v. Miller, 53 L. J. Cr. 682, and especially jdgmt. of Lindley, L. J.

"dwelling-house" Burglary, 8. "means a permanent building in which the owner, or the tenant or any member of the family, habitually sleeps at night" (Steph. Cr. 247 V. Arch. Cr. 561-564; Va. 24 & 25 V. c. 96, s. 53). Lord Coke thought that burglary might be committed in a church, "for ecclesia est domus mansionalis omnipotentis Dei" (3 Inst. 64); but Lord Hale thought-(he might possibly have spoken more decidedly)—that that opinion was only a quaint turn without any argument. Hale, 556; V. now 24 & 25 V. c. 96, s. 50.

A dwelling-house is a building inhabited by man, otherwise a mansion, which is synonymous with the French word maison, the abode or residence of a family. N. Y. Fire Department v. Buhler, 35 N. Y. 182.

It includes the building and such attachments as are usually occupied and used by a family for the ordinary purposes of a house. Chase v. Hamilton Ins. Co., 20 N. Y. 55.

DYING DECLARATION.

Defined.

A statement made by a person under the immediate apprehension of death, and who dies soon after. Marshall v. Chicago & G. E. R. Co., 48 Ill. 477.

Declarations made in extremity, when the party is at the point of death and when every hope of this world is gone—when every motive of falsehood is silenced and the mind induced by the most powerful considerations to speak the truth. People v. Buettner, 233 Ill. 275; Brom v. People, 216 Ill. 155; Westbrook v. People, 126 Ill. 89; Digby v. People, 113 Ill. 126.

Such as are made by the party, relating to the fact of the injury of which he afterwards dies, under the firm belief and moral conviction that his death is impending and certain to follow almost immediately, without opportunity · for repentance and in the absence of all hope of avoidance,-when he has despaired of life and looks on death as inevitable and at hand. People v. Cassesse, 251 Ill. 425; People v. Buettner, 233 Ill. 275; Brom v. People, 216 Ill. 154; Nordgren v. People, 211 Ill. 435; North v. People, 139 Ill. 103; Westbrook v. People, 126 Ill. 89; Digby v. People, 113 Ill. 127; Tracy v. People, 97 Ill. 106; Starkey v. People, 17 Ill. 21. To a similar effect see Collins v. People, 194 Ill. 519; Hagenow v. People, 188 Ill. 553; Simons v. People, 150 Ill. 73; Barnett v. People, 54 Ill. 329; Murphy v. People, 37 Ill.

Dying declarations, as is well settled, are neither more nor less than statements of material facts concerning the cause and circumstances of homicide, made by the victim under the solemn belief of impending death, the effect of which on the mind is regarded as equivalent to the They are substisanctity of an oath. tutes for sworn testimony, and must be such narrative statements as a witness might properly give on the stand if living. People v. Olmstead, 30 Mich. 435.

What Constitutes.

The question whether a statement constitutes a "dying declaration" cannot be determined alone from testimony as to what the declarant said at the time of making the statement, but also in view of the acts of the declarant, taken in connection with his words, as well as the circumstances surrounding the declarant when he makes the statement. Brom v. People, 216 Ill. 158; Nordgren v. People, 211 Ill. 436; Starkey v. People, 17 Ill.

When a declaration is offered in evidence as a "dying declaration," it is competent to prove that when the declarant made the statement he was in a reckless or irreverent frame of mind, or that he entertained hostile views toward defendant. Nordgren v. People, 211 Ill. 436; Tracy v. People, 97 Ill. 107.

If a declarant has abandoned all hope of life and looks on death as certain to follow, immediately, a statement then made will constitute a "dying declara- | a view different from that of the doctor

tion" although the belief was brought about by statements made to the declarant by a nurse and a physician. People v. Buettner, 233 Ill. 276.

To constitute a statement a "dying declaration." it must have been made in view of impending death, and under the sanctions of a moral sense of certain and Nordgren v. People, just retribution. 211 Ill. 435; Digby v. People, 113 Ill. 128; Tracy v. People, 97 Ill. 106; Scott v. People, 63 Ill. 510.

Principles Governing Admission.

The principle on which dying declarations are admitted is that they are made in a condition so solemn and awful as to exclude the supposition that the party could have been influenced by malice, revenge or any conceivable motive to misrepresent, and when every inducement, emotion and motive was to speak the truth. People v. Cassesse, 251 Ill. 425; Nordgren v. People, 211 Ill. 435; Tracy v. People, 97 Ill. 106; Scott v. People, 63 III, 510.

Request for Religious Consolation.

The expression by a declarant of a desire for the consolations of religion has been held to be one of the strongest proofs of a state of mind requisite to constitute statements then made as a "dying declaration" where the particular religion or church to which the declarant belongs provides for the administration of certain rites, such as extreme unction, when, and only when, such persons are in articulo mortis. People v. Buettner, 233 Ill. 277.

The fact that a declarant manifests a desire for the consolations of religion and sends for a clergyman shows that declarant had a fixed belief that death was near at hand. People v. Buettner, 233 Ill. 276.

Response to Efforts to Cheer.

The fact that a declarant who was suffering intense pain made some remark in answer to cheering efforts of nurses is insufficient to prove that he entertained or that expressed in his signed statement. People v. White, 251 Ill. 75.

Necessity That Declarant Be in Articulo Mortis.

Statements that to constitute a "dying declaration" there must be a belief that death is at hand or immediate do not mean that the declarant must be in articulo mortis, or that death is impending at the very instant, but mean that death must be regarded as inevitable within a very short time, and that it is not sufficient for the declarant to believe that he will at some time in the future die from the effects of his injury, but that all hope of life has been abandoned and that death will follow soon. People v. Cassesse, 251 Ill. 426. To a similar effect see North v. People, 139 Ill. 104.

Time of Death as Affecting.

If a fixed belief of impending death within a short time is entertained by the declarant, his statement will constitute a "dying declaration" although his belief be not realized, and although, contrary to his expectation, he lived for thirty-five days after making the declaration. People v. Cassesse, 251 Ill. 426. To a similar effect see North v. People, 139 Ill. 104.

Question of Law.

The question whether the statements alleged to be "dying declarations" are made under such circumstances as to constitute them such is a question of law to be determined by the court on preliminary proof, which must satisfy the court beyond a reasonable doubt that the declaration was made in extremity. People v. White, 251 Ill. 75; Brom v. People, 216 Ill. 159; Nordgren v. People, 211 Ill. 436; Westbrook v. People, 126 Ill. 89; Tracy v. People, 97 Ill. 106; Starkey v. People, 17 Ill. 21.

DYNAMITE.

Dynamite is composed of nitro-glycerine and clay or sawdust; it must be handled with care; it will explode, if subjected to too great a degree of heat; it

should not be exposed to the rays of the sun, or placed too near the fire. Spies v. People, 122 Ill. 111.

EACH.

Defined.

Every one of the two or more individuals composing the whole, considered separately from the rest. (Scott J. dissenting opinion) Knickerbocker v. People, 102 Ill. 233.

"Every one of any number separately considered." State v. Maine Cent. R. Co., 66 Me. 510.

Common Meaning—Refers Singly to Individuals Designated.

The word "each," in its common acceptation, refers singly to the individuals designated in the clause in which it is used. Auger v. Tatham, 191 Ill. 300.

Will.

A will bequeathing to named persons "each" a named sum is not to be construed as a devise to a class, but as a devise of the named amount to the named persons singly, unless there is other language in the will showing an intention to put a more limited construction on the word "each." Auger v. Tatham, 191 Ill. 303.

A gift to "each" of two or more persons, or to "each of their respective heirs" (Gordon v. Atkinson, 1 D. G. & S. 478: Cp. Ex p. Tanner, 24 L. J. Ch. 657; 20 Bea. 374: Vf. 2 Jarm. 257), creates a tenancy in common.

EACH AND EVERY.

"The use of the words 'each and every' shows that the legislative intention was both general and specific and embraced all villages and incorporated towns, whether existing under general or special laws." McCormick v. People, 139 Ill. 507.

EACH COURT OF RECORD.

The expression "each court of record," used in section 1 of the act of 1889, now



section 27 of the Practice Act (J. & A. ¶8564), relating to short cause calendars, means every court of record. Jensen v. Fricke, 133 Ill. 175.

EACH JUDGE.

The expression "each judge," used in section 2 of the act of 1889, now section 28 of the Practice Act (J. & A. ¶ 8565), relating to short cause calendars, means every judge. Jensen v. Fricke, 133 Ill. 175.

EACH GENERAL ASSEMBLY.

The expression "each general assembly," used in section 18 of article 4 of the Constitution of 1870, relating to appropriations, has sole reference to a general assembly to be elected after the adoption of the constitution, and not to prior legislatures elected under the Constitution of 1848. People v. Lippincott, 64 Ill. 259.

EACH PARTY.

The expression "each party," used in section 49 of the Practice Act of 1874, now section 69 of the Practice Act (J. & A. ¶ 8606), relating to peremptory challenges, refers to each side of the case, no matter how many parties may be on that side. North American Restaurant v. McElligott, 227 Ill. 320; Freiberg v. South Side E. R. Co., 221 Ill. 511; Illinois, I. & M. Ry. Co. v. Freeman, 210 Ill. 274; Gordon v. Chicago, 201 Ill. 625; Schmidt v. Chicago, 83 Ill. 407; North American Restaurant v. McElligott, 129 Ill. App. 510.

EACH YEAR.

A contract of employment which provides that the employee shall have two weeks vacation "each year" with pay refers to each year in a two years contract where the contract provides a series of payments to be made to such employee without interruption during a period of two years but does not expressly state any term during which the contract is to

operate. Freidman v. Schreiber, 195 Ill. App. 420.

EARNING CAPACITY.

"The 'earning capacity' of the deceased, or, as it is expressed in * * * [Pub. St. 1901, c. 191, § 12, declaring that, in assessing damages for the death of a person, the jury shall consider his probable duration of life and capacity to earn money], 'his capacity to earn money,' must be understood to mean capacity to earn money for his estate. When, * * * the deceased is an infant of tender years, he has no present capacity for earning money for himself or any one else; but the capacity referred to is not limited to the time of death; it is the capacity that would exist during life but for the injury." Carney v. Concord St. R. Co., 72 N. H. 376.

EARNINGS.

The word "earnings," in its general acceptation, does not mean net earnings unless qualified in some way. Smith v. Bates, etc., Co., 182 Ill. 169.

EASEMENT.

Defined.

A mere intangible right or license appurtenant to land, which does not include the right to the possession of the land. Lee v. Harris, 206 Ill. 434.

An incorporeal hereditament, consisting of a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner; a liberty, privilege or advantage in land distinct from the ownership. Wessels v. Colebank, 174 Ill. 622.

A privilege upon or in the land of another, such as a right of way, and the like. St. Louis, etc., Co. v. Curtis, 103 Ill. 419.

Implies Interest in Land.

An easement always implies an interest in the land in or over which it is

enjoyed. Chaplin v. Commissioners of Highways, 126 Ill. 271.

License Distinguished.

A license, unlike an easement, is not an interest in the land, but is only a privilege to go upon the land for a special purpose, and is revocable at the will of the owner, while an easement is irrevocable. Forbes v. Balénseifer, 74 Ill. 185.

Classification.

Easements are of two kinds,—appurtenant or appendant, and in gross, the former running with the land, and the latter being personal, and not assignable. Kuecken v. Voltz, 110 Ill. 268. To the same effect see Koelle v. Knecht, 99 Ill. 403.

Contract for Joint Use of Track as.

A contract between two railroads providing that one shall have the right to run its trains over the tracks and land of the other, creates an easement, extending only to a temporary disturbance of the owner's possession. Cook County v. Chicago, B. & Q. R. Co., 35 Ill. 464.

Cannot be Created by Parol.

An easement, being connected with and appurtenant to real estate, so far partakes of the character of lands that it cannot be created by parol, but only by grant, or prescription, which implies a previous grant. Lake Erie & W. R. Co. v. Whitham, 155 Ill. 528; Dwight v. Hayes, 150 Ill. 281; Forbes v. Balenseifer, 74 Ill. 185.

Easement in One's Own Land Impossible.

A man can have no easement in his own land, since he has the exclusive and the whole uninterrupted right to its enjoyment. St. Louis, etc., Co. v. Curtis, 103 Ill. 419.

Natural Easement.

The right of drainage through a natural watercourse is a natural easement appurtenant to the land of every individual through whose land such natural watercourse runs. Chicago, B. & Q. Ry. Co. v. People, 212 Ill. 109.

Implied Grant.

A mere convenience is not sufficient to create an easement by implied grant. Henry v. Breyer, 151 Ill. App. 569.

The foundation of the doctrine of easements by implication is a disposition and arrangement of the premises as to the uses of the different parts by him having the unity of possession and then a severance. Hankins v. Hendricks, 247 Ill. 521; Powers v. Heffernan, 233 Ill. 601; Martin v. Murphy, 221 Ill. 638; Morrison v. King, 62 Ill. 35. To the same effect see Clarke v. Gaffeney, 116 Ill. 369; Foote v. Yarlott, 131 Ill. App. 536.

Where one grants a mill or other improvement, for the enjoyment of which an easement is used over or upon other lands belonging to the grantor, such easement passes by the grant, as an appurtenance to the thing granted. Jarvis v. Seele, etc., Co., 173 Ill. 194; Hadden v. Shoutz, 15 Ill. 582.

The rule of the common law was that where the owner of two heritages, or of one heritage consisting of several parts, has arranged and adapted these so that one derives a benefit or advantage from the other of a continuous and obvious character, and sells one of them without making mention of those incidental advantages or burdens of one in respect to the other, there is, in the silence of the parties, an implied understanding and agreement that these advantages and burdens, respectively, shall continue as before the separation of the title. Powers v. Heffernan, 233 Ill. 602; Martin v. Murphy, 221 Ill. 638; Newell v. Sass, 142 Ill. 115; Ingals v. Plamondon, 75 Ill. 123. To the same effect see Cihak v. Klekr. 117 Ill. 653.

It is not necessary that the easement claimed be absolutely necessary for the enjoyment of the estate granted, but it is sufficient if it be highly convenient and beneficial thereto. Hankins v. Hendricks, 247 Ill. 521; Newell v. Sass, 142 Ill. 115; Cihak v. Klekr, 117 Ill. 653.

No easement exists so long as there is a unity of ownership, because the owner of the whole may at any time rearrange the qualities of the several parts. Powers v. Heffernan, 233 Ill. 602; Martin v. Murphy, 221 Ill. 639.

The making and recording of a plat create no easement so long as the title to the land platted remains in the original owners. Hankins v. Hendrick, 247 III. 521.

- Party Wall Agreement as.

An agreement leasing to an adjoining landowner the right to use a party wall on the other's land for a term of years, or so long as the wall stands, if destroyed before the end of the term, creates an easement appurtenant to the land of such abutter. Mackin v. Haven, 187 Ill. 498.

An agreement between adjoining landowners covenanting for the use of a party wall as support for their respective buildings creates cross easements in the respective owners of the adjacent lots. Roche v. Ullman, 104 Ill. 19.

Implied Reservation.

To create an easement by implied reservation, the evidence must be much stronger than in case of an implied grant, and though an absolute necessity need not be shown, there must be evidence of a reasonable necessity, as distinguished from a mere convenience. Powers v. Heffernan, 233 Ill. 603.

A plat showing a broken line with the words "building line fifty feet north from the boulevard line" shows an intention to reserve to the public and the property abutting on the street in a space fifty feet in width to an unobstructed view across the entire reservation. Simpson v. Mikkelsen, 196 Ill. 578.

EAST END.

A collector's list of delinquent taxes describing a lot as the "east end" of a block is to be construed as meaning the "east half" of the block. Chiniquy v. People, 78 Ill. 575.

EAST SIDE.

A mortgage describing the mortgaged

quarter of a section describes the east half of such section. Kemp v. Moir, 45 Ill. App. 491.

EATING HOUSE.

A house where provisions are sold ready cooked and generally eaten on the premises. Cecil v. Green, 60 Ill. App. 63.

EAVES-DROPPERS.

Such as listen under walls, or windows, or the eaves of houses, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. State v. Pennington, 3 Head (Tenn.) 300. Quoting 4 Bl. Com. 168.

ECCHYMOSIS.

Græco-Lat. [from Greek to In medical jurisprudence. effusion of blood under the skin. Beck's Med. Jur. 15-17. Taylor's Med. Jur. 181.

EDITION.

In a contract between an author and a publisher, an "edition" consists of so many copies as are issued to the public at a time; and, where the work is stereotyped, every fresh issue is a new edition (Reade v. Bentley, 27 L. J. Ch. 254; 4 K. & J. 656). In that case Wood, V.-C., said (27 L. J. Ch. 259), "I apprehend the meaning of the word 'editions,' is the putting forth the work at successive periods; and whether that is done by moveable type or by stereotype does not seem to me to make any substantial difference."

EDUCATION.

"Education" means training up the young in general learning; not teaching for a business or profession. Therefore the property of the Institution of Civil Engineers is not exempt (under s. 11, subs. 3, Customs & Inl. Rev. Act, 1885. 48 & 49 V. c. 51) from assessment bepremises as the "east side" of a certain | cause used "for the promotion of education" Re Institution of Civil Engineers, 19 Q. B. D. 610; 20 Ib. 621; 56 L. J. Q. B. 576; 57 Ib. 353; 36 W. R. 523, 598; 3 Times Rep. 729.

In its broadest sense, the word "education" comprehends not merely the instruction received at school or college, but the whole course of training, moral, intellectual and physical, and with a view to the highest and best interests of minors. Ruohs v. Backer's next friend, 6 Heisk. (Tenn.) 400.

EDUCATIONAL CORPORATIONS.

Educational institutions, such as academies and universities, are public if they are exclusively owned and controlled by the state and in some cases such corporations are provided for by constitutional provisions. But the fact that a corporation is established for educational or charitable purpose does not of itself make it a public corporation. 1 Fletcher Cyclopedia Corporations 98.

EDUCATIONAL PURPOSES.

General Expression.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, is general, applying to all matters for which a board of directors may levy school taxes. Wabash R. Co. v. People, 187 III. 296; O'Day v. People, 171 III. 297.

"School Purposes" Synonymous.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, is used interchangeably with, and as meaning the same thing as, the expression "school purposes," used in section 2 of said article 8. People v. Ross, 271 Ill. 70; Chicago & A. R. Co. v. People, 205 Ill. 629; Koelling v. People, 196 Ill. 360; Wabash R. Co. v. People, 187 Ill. 297; O'Day v. People, 171 Ill. 297.

Items of Expense.

Section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, requiring the filing of a certificate stating the amount required, inter alia, for "educational purposes," does not require the certificate to contain the items of such amount. Koelling v. People, 196 Ill. 361.

Repairs and Maintenance.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, includes such expenses as building a small coal house near a school, painting and paper hanging, materials for building, building a porch, stoves and repairs thereon, and fuel and janitor service. O'Day v. People, 171 Ill. 297.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, includes the whole expense of maintaining schools except that of building school houses. People v. Ross, 271 Ill. 70.

Current Expenses.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, includes the ordinary current expenses of the school, and ordinary repairs. Wabash R. Co. v. People, 187 Ill. 296. To the same effect see Chicago & A. R. Co. v. People, 163 Ill. 621.

Heating Apparatus.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, includes the expense of installing a steam heating apparatus in a schoolhouse, to

replace one which has become useless. Wabash R. Co. v. People, 187 Ill. 296.

Bonded Indebtedness.

The expression "educational purposes," used in section 1 of article 8 of the Schools Act of 1889, now section 189 of the Schools Act (J. & A. ¶ 10227), relating to taxation for the use of schools, includes the bonded indebtedness incurred for such purposes. Chicago & A. R. Co. v. People, 205 Ill. 629.

EFFECT.

The "effect" of a cause, is anything which would not have happened but for that cause; and it is none the less an effect of such a cause, because it has been developed or accelerated by something supervening. Therefore where a policy assured against "any injury caused by accident or violence * * *, and if the assured should die from the effects of such injury," and the assured met with an accident and died from pneumonia resulting from a cold the catching of which and its fatal result were due to the bad condition of his health which was the consequence of the injury caused by the accident; -held, that the death resulted from "the effects" of the injury. Isitt v. Railway Passengers' Assrce., 58 L. J. Q. B. 191; 22 Q. B. D. 504; 5 Times Rep. 194.

To prosecute a replevin, within condition of replevin bond (or any other matter) "with effect," is to conduct it to a not unsuccessful termination (Perreau v. Bevan, 4 L. J. O. S. K. B. 177; 5 B. & C. 284: Jackson v. Hanson, 10 L. J. Ex. 396; 8 M. & W. 477); and such is the meaning even where a replevin is removed by the defendant (Tummons v. Ogle, 25 L. J. Q. B. 403; 6 E. & B. 571); so that in no case can the death of the plaintiff be a breach. Ormond v. Bierly, Carth. 519; Morris v. Matthews, 11 L. J. Q. B. 57; 2 Q. B. 293.

EFFECTS.

Defined.

Property or worldly substance. Andrews v. Applegate, 223 Ill. 538; Adams | ever can be turned to value; and, there-

v. Akerlund, 168 Ill. 637; Union, etc., Bank v. Byram, 131 Ill. 100; Illinois, etc., Co. v. Long, 41 Ill. App. 335.

The word "effects" is a very general term, used to denote whatever a man has that can effect, produce or bring forth money by sale. Adams v. Akerlund, 168 Ill. 637.

The term "effects" may be used to embrace every kind of porperty, real and personal, including things in action. Adams v. Akerlund, 168 Ill. 637.

The word "effects" in its primary and ordinary meaning includes only personal estate, goods, movables and chattel property. Andrews v. Applegate, 223 Ill. 538.

"Goods" Compared.

The term "effects" denotes property in a more extensive sense than "goods." Andrews v. Applegate, 223 Ill. 538; Adams v. Akerlund, 168 Ill. 637; Union, etc., Bank v. Byram, 131 Ill. 100; Illinois, etc., Co. v. Long, 41 Ill. App. 335.

As Including All Kinds of Personal Property.

The word "effects" includes all kinds of personal property, such as shares of capital stock. Andrews v. Applegate, 223 III. 538.

"The word 'effects' (and even the word 'goods' or 'chattels') will, it seems, comprise the entire personal estate of the testator, unless restrained by the context within narrower limits" (1 Jarm. 751: Va. Wms. Exs. 1184; Hodgson v. Jex, 45 L. J. Ch. 388; 2 Ch. D. 122; Re Shepheard, 48 L. J. P. D. & A. 62: Dunally v. Dunally, 6 Ir. Ch. Rep. 540)—for an example of such a context. Borton v. Dunbar, 30 L. J. Ch. 8.

"The words 'goods, chattels, and effects,' which the bequest contended to be residuary contains, or any of them, are terms that, in their proper sense and nature, are sufficiently large to include and pass the absolute interest in the whole personal estate." Sir James Bruce. V. C., Parker v. Marchant (1842), 1 Younge & C. Ch. 300.

"I take effects to be synonymous to worldly substance, which means whatfore, that real and personal effects mean all a man's property." Hogan v. Jackson, 1 Cowp. 304.

Generally speaking, the word "effects," in a will, is equivalent to "property," or "worldly substance." Hockley v. Mawley, 1 Hov. Supp. 57.

Shares of Stock.

The term "effects," used in section 21 of the Attachments Act (J. & A. ¶ 512), relating to garnishment, includes shares of stock. Illinois, etc., Co. v. Long, 41 Ill. App. 335.

The term "effects," used in section 8 of the Attachments Act (J. & A. ¶ 499), referring to the execution of writs, includes shares of stock. Union, etc., Bank v. Byram, 131 Ill. 100.

Realty.

Unless the context of a will shows an intention to dispose of his realty by the use of the term "effects," it will not include such realty, but where it appears from other parts of the will that such was the intention of the testator the term may include land, and should be so construed. Andrews v. Applegate, 223 Ill. 538; Adams v. Akerlund, 168 Ill. 638.

When the term "effects" is used in a will, it means personal property as a general thing, and not real property. Andrews v. Applegate, 223 Ill. 538; Adams v. Akerlund, 168 Ill. 636.

Where a testator has two tracts of land, one of which he specifically devises, and uses the term "effects" in connection with personal property, the quoted word cannot be construed to include the tract of land not specifically devised. Andrews v. Applegate, 223 Ill. 538.

"The cases establish this, that the word 'effects' will not per se include real estate. They also establish that the word 'devise' is not enough to give to 'effects' a more extended meaning, and that the words 'of what nature, kind, or quality whatsoever' are by themselves not enough." But in one will "effects," "devise," and words equivalent in meaning to the other phrase mentioned, followed in a subsequent clause by the word "property" used as equivalent to

"effects"—are enough to include real estate. Hall v Hall, [1891] 3 Ch. 389.

"'The word "effects" is confined to personal estate, and does not include real estate unless an intention appear to the contrary." Per Lindley L. J. Hall v. Hall [1892] 1 Ch. 361, citing Hawkins.

EFFECTS AND VALUABLES.

Under the Illinois Inkeeper's Act, Rev. St. ch. 71, §§ 1, 2, (J. & A. ¶¶ 6193, 6194), providing for a lien upon all "baggage," "other valuables" and "effects" brought into a hotel by guests, a player piano brought into a hotel by a guest must be considered as part and parcel of his effects and valuables. Baldwin Co. v. Keeley, 198 Ill. App. 287.

EFFICIENT CAUSE.

The working cause, or that cause which produces effects or results. Ford v. Hine, etc., Co., 237 Ill. 469; Pullman, etc., Co. v. Laack, 143 Ill. 262; McRae v. Hill, 126 Ill. App. 353; Chicago & E. I. R. Co. v. Mochell, 96 Ill. App. 183; Morris v. Stanfield, 81 Ill. App. 273.

EIGHTEEN AND SIXTY-EIGHT.

Promissory Note—Refers to Year 1868.
A promissory note payable on or by the first of March, "eighteen and sixty-eight," is payable March 1, 1868. Mc-Clenathan v. Davis, 243 Ill. 92; Massie v. Belford, 68 Ill. 292.

EITHER.

Each of two; the one and the other. Chicago & N. P. R. Co. v. Chicago, 172 Ill. 68.

The word "either" is sometimes used in the sense of one or the other of several things, and not infrequently in the sense of one and the other, it being common to say on either hand, on either side, meaning, thereby, on each hand or side. Chidester v. Springfield & I. S. E. Ry. Co., 59 Ill. 89.

Where there is a devise to two, "but in case either one of them should die

without children that share to go to the other," and both die without children, the property on the death of the one who died first goes to the other. Drennan v. Andrew, 36 L. J. Ch. 1; 1 Ch. 300.

In Re Hill to Chapman the question turned on the following phrase in a will,
—"in case of the death of either of them;" on which Brett, M. R., observed,
"I think the word 'either' means 'one,' and not 'the other'" (54 L. J. Ch. 597).
So in Sharp v. Sharp (2 B. & Ald. 405; stated, Lewin, 655), a power to appoint new trustees "in case either" of the appointed trustees should die, &c., "either" was held to mean "some one" of the trustees, not "all" of them.

EITHER IS CORRECT.

The language of a witness in regard to accounts given by different witnesses of the same transaction that "either is correct" means that their language means the same. Masonic, etc., Home v. Gracy, 190 Ill. 104.

EITHER SIDE.

An ordinance requiring curbstones to be set on "either side" of a roadway requires the curbstones to be set on both sides. Chicago & N. P. R. Co. v. Chicago, 172 Ill. 68.

Where in consideration of the erection by a railroad company of a station in a named locality, a land owner executes a bond covenanting to convey to the railroad a right of way and a tract of seven acres of land adjoining such right of way on "either side," the covenant is to be construed as meaning a conveyance of a tract, one-half of which shall be on one side of the right of way, and onehalf on the other, in other words, equally on each side, so that where the railroad located its road so that the land owner did not own one-half the named amount of the land on one side it cannot claim to be reimbursed on the other side, but can claim but one-half the amount on that side, and what the land owner owns on the other. Chidester v. Springfield & I. S. E. Ry. Co., 59 Ill. 89.

EJECTMENT.

Defined.

A possessory action which determines none but possessory rights. Chicago & E. I. R. Co. v. Clapp, 201 Ill. 431.

An action at law in which only legal titles are considered adjudicated. Ladd v. Ladd, 252 Ill. 47; Aholtz v. Zellar, 88 Ill. 25. To the same effect see Esker v. Heffernan, 159 Ill. 41; Barrett v. Hinckley, 124 Ill. 38.

The action of ejectment, under the Ejectment Act (J. & A. ¶¶4663 et seq.), is an original action for the recovery of title as well as possession. Chicago T. R. Co. v. Barrett, 252 Ill. 92; Guyer v. Wookey, 18 Ill. 537.

Not Action of Tort.

The action of ejectment, under the Ejectment Act (J. & A. ¶¶ 4663 et seq.), is not even technically an action of tort. Guyer v. Wookley, 18 Ill. 537.

Forcible Entry and Detainer Distinguished.

The object of the action of ejectment is to try the title to property, while in an action of forcible entry and detainer the immediate right of possession is all that is involved, and the title cannot be inquired into for any purpose. Riverside Co. v. Townshend, 120 Ill. 16.

EJUSDEM GENERIS.

Defined.

A maxim which is an illustration or specific application of the broader maxim, noscitur a sociis. Gage v. Cameron, 212 Ill. 157; Union, etc., Co. v. Chicago, 199 Ill. 519; Misch v. Russell, 136 Ill. 25.

A rule of construction of statutes, contracts and other instruments, that where there is a general description, coupled with an enumeration of specific things or kinds of property, the general description is commonly understood to embrace and include only those things of a like kind with those enumerated, unless a contrary intention appears. Strickland v. Strickland, 271 Ill. 617. To the same effect see People v. Melville, 265 Ill. 178; Chicago v. Ross, 257 Ill. 79; Gage v.

Cameron, 212 Ill. 160; Union, etc., Co. v. Chicago, 199 Ill. 520; Gundling v. Chicago, 176 Ill. 345; Spalding v. People, 172 Ill. 49; Gillock v. People, 171 Ill. 309; Adams v. Akerlund, 168 Ill. 637; Cecil v. Green, 161 Ill. 268; Ritchie v. People, 155 Ill. 107; Webber v. Chicago, 148 Ill. 318; Union County v. Ussery, 147 Ill. 208; Ambler v. Whipple, 139 Ill. 317; First, etc., Bank v. Adam, 138 Ill. 500; Misch v. Russell, 136 Ill. 25; Wilson v. Board of Trustees, 133 Ill. 471; Shirk v. People, 121 Ill. 65; In re Swigert, 119 Ill. 89; Brush v. Lemma, 77 Ill. 498.

"By the application of the maxim ejusdem generis, which is only an illustration or specific application of the broader maxim noscuntur a sociis, general and specific words which are capable of an analogous meaning being associated together, take color from each other, so that the general words are restricted to a sense analogous to the less general." Misch v. Russell, 136 Ill. 25.

Applied to Construction of Statute.

The maxim ejusdem generis is especially applicable to all statutes requiring a strict construction. Chicago v. M. & M., etc., Co., 248 Ill. 272; In re Swigert, 119 Ill. 89.

The rule of ejusdem generis is enforced in the construction of a statute unless there is something in the context which shows the contrary. People v. Melville, 265 Ill. 179; Chicago v. Ross, 257 Ill. 79.

Construction of Entire Statute.

The rule of ejusdem generis must yield to the rule that every part of a statute should, if possible, be upheld and given its appropriate force. Gage v. Cameron, 212 Ill. 162; Misch v. Russell, 136 Ill. 25.

Object of Rule.

The rule of ejusdem generis is one of many rules of construction which are employed for the same end—to ascertain the intention. Strickland v. Strickland, 271 Ill. 617; Gage v. Cameron, 212 Ill. 161; Gillock v. People, 171 Ill. 310; Webber v. Chicago, 148 Ill. 318.

When Inapplicable.

The restriction of general words by the doctrine of ejusdem generis cannot go to the extent of depriving them of meaning, so that where the particular words exhaust a whole genus, and are so complete and exhaustive as to leave nothing which can be called ejusdem generis, the words must refer to some larger class. Gage v. Cameron, 212 Ill. 161; Gillock v. People, 171 Ill. 310; Taubenhan v. Dunz, 125 Ill. 533.

The maxim ejusdem generis cannot be invoked to nullify or destroy the meaning of general terms and provisions. Chipago v. M. & M., etc., Co., 248 Ill. 272; Gillock v. People, 171 Ill. 310.

The maxim ejusdem generis does not apply where the specific words signify subjects greatly different from one another, for in such case the general expression may consistently add one more variety, and in such case the general term must receive its natural and wide meaning. McReynolds v. People, 230 Ill. 633.

The rule of ejusdem generis will not be applied where from the whole statute or contract a larger intent may be gathered, which the application of the rule would defeat. Gage v. Cameron, 212 Ill. 161; Webber v. Chicago, 148 Ill. 318.

-"When the result of thus restricting the general words would be that they would have no effect at all, they must be extended to things superior in quality to those enumerated. * * For the same reason the restriction of general words to things ejusdem generis must not be carried to such an excess as to deprive them of all meaning. The enumeration of particular things is sometimes so complete and exhaustive as to leave nothing which can be called ejus-If the particular words dem generis. exhaust a whole genus, the general words must refer to some larger class. This rule can be used only as an aid in ascertaining the legislative intent, and not for the purpose of contravening the intention, or of confining the operation of the statute within narrower limits than was intended by the law maker." Gillock v. People, 171 Ill. 310, quoting Sutherland Statutory Construction §§ 278, 279.

Yields to Intention.

The rule of ejusdem generis always bends to a contrary intention. Strickland v. Strickland, 271 Ill. 617.

ELDEST.

The prima facie meaning of "eldest" is "eldest, or first, born" (2 Jarm, 213: Bathurst v. Errington, 46 L. J. Ch. 748; 2 App. Ca. 698; Meredith v. Treffry, 48 L. J. Ch. 337; 12 Ch. D. 170). It is, however, sometimes construed as meaning the person already provided for.

"An eldest or only son, prima facie, means one individual and not a series of persons" (per Kay, J., Domvile v. Winnington, sup.); and it was accordingly held in that case that when once a clause of exclusion has had its application, it has become satisfied and its operation exhausted.

In Thellusson v. Rendlesham (28 L. J. Ch. 948; 7 H. L. Ca. 429), a case on the celebrated Thellusson Will, "eldest"-in the phrase "eldest male lineal descendant,"-was construed prior in line, not senior by birth. In his judgment in that Lord Wensleydale said,—"The 'eldest' magistrate, or officer, might not mean him who had lived the greatest number of years, nor even him who had filled the office for the longest time, for it might indicate rank only, and the 'eldest earl of England' would not mean him who was most advanced in years, but the eldest in point of family origin,-the Premier Earl."

Where provisions are made by any person, whether in loco parentis or not, for "younger children," by an instrument that does not make provision, or does not refer to or is not shown by extrinsic evidence to be connected with provisions already made, for the "eldest" child, the words "younger" and "eldest" are used in their primary meaning. On the other hand, where the provisions are made by a person in loco parentis for "younger" children, by an instrument which limits an estate to, or refers to, or is shown by

extrinsic evidence to be connected with, an instrument limiting an estate to the "eldest" child, the word "eldest" is a designation of the person succeeding to the estate, i.e., "provided for,"—and "younger," of the person not doing so, i.e., "unprovided for" (Elph. 338 et seq., and cases there cited in illustration and exception; 2 Jarm. 201: and as to when the "eldest" and "younger" children are to be ascertained, 2 Jarm. 204-213. Wms. But "Livesey v. Livesey Exs. 1094). (2 H. L. Ca. 419) is a decision of the H. L. that where you cannot read 'eldest son' as meaning son entitled to a particular estate, the words must have their literal signification." Per Kay, J., Domvile v. Winnington, 53 L. J. Ch. 786; 26 Ch. D. 382, in which case the word was construed literally.

ELECTION.

Defined.

The act of choosing. Schwarzschild v. Goldstein, 121 Ill. App. 4.

The choice made by a party of two alternatives, by taking of one of which the chooser is excluded from the other. Schwarzschild v. Goldstein, 121 Ill. App.

The choice of one of two rights or things, to each of which the party choosing has an equal right, but both of which he cannot have. Bliss v. Geer, 7 Ill. App. 617.

The term "election" implies a choice between different things. Ward v. Ward, 134 Ill. 421.

"The word 'election' is properly applied to the choice of an officer by the votes of those upon whom the law has conferred the right of electing such officer." State v. Squire, 39 Ohio St. 199.

Civil Law Doctrine.

The doctrine of election is not a creation of the common law, but was imported into equity from the civil law, and has since become a familiar part of that branch of our jurisprudence. Carper v. Crowl, 149 Ill. 475. To the same effect see Wilbanks v. Wilbanks, 18 Ill. 19.

When Applicable.

In the earlier cases the doctrine of election found application usually to devises of land where dower was also asserted therein, but in modern practice has been extended to cases arising under all kinds of instruments of donation. Carper v. Crowl, 149 Ill. 475. To the same effect see Wilbanks v. Wilbanks, 18 Ill. 19.

The doctrine of election applies wherever there is a plurality of rights in the alternative, and commonly is voluntary. Platt v. Ætna, etc., Co., 153 Ill. 120.

Of Rights.

To constitute a binding election there is required, in addition to the fact of knowledge of the fact necessary to a valid election, some distinct language, act or omission, which under the special circumstances plainly indicates the party's choice of one alternative and waiver of the other. Platt v. Ætna, etc., Co., 153 Ill. 120.

Where a fire insurance company has the right, in case of loss, either to rebuild or pay the amount of the policy, its decision to do the latter, if communicated to the insured, will constitute a valid election and will bind the insurer, although made in less than the time allowed by the policy, and although within such time it decides to do the former. Platt v. Ætna, 153 Ill. 120.

Of Remedies.

The bringing of a replevin suit to recover goods will not constitute an election which will bar a later suit for the purchase price where at the time the replevin suit was brought, plaintiff had parted with title to the goods, and had no right to their possession. Bliss v. Geer, 7 Ill. App. 617.

Where parties have the right to proceed either at law or in equity, their choice to do either constitutes an election, and bars a proceeding in the other to relitigate the question. Carr v. Arnold, 239 Ill. 40; Illinois C. R. Co. v. Hodges, 113 Ill. 326; Abrams v. Camp, 4 Ill. 291.

The doctrine of election is usually

predicated on inconsistent remedies. Stier v. Harms, 154 Ill. 480; Schwarz-schild v. Goldstein, 121 Ill. App. 4.

The fact that a mortgagee of cattle brings an attachment suit to recover the price for which the cattle were sold does not operate as an election so as to bar the mortgagee from laying claim to the fund in a bill of interpleader brought to determine title to the fund, where the attachment suit, after being pending nearly two years, was dismissed by consent without prejudice, and without proceeding to judgment. First, etc., Bank v. Barse, etc., Co., 198 Ill. 235. To the same effect see Flower v. Brumbach, 131 Ill. 651; Gibbs v. Jones, 46 Ill. 321.

The doctrine of election consists in holding the party to whom several courses are open for obtaining relief, to his first election, where he subsequently attempts to avail himself of some further and other remedy not consistent with, but contradictory of, his previous attitude and action upon his claim. Stier v. Harms, 154 Ill. 480.

The basis of the doctrine of election, as applied to inconsistent remedies, is that where there is, by law or contract, a choice between two remedies which proceed upon two opposite and irreconcilable claims of right, the one taken must exclude and bar the prosecution of the other. Stier v. Harms, 154 Ill. 480.

Will.

The doctrine of election, as applied to wills, rests upon the ground that one who asserts a claim to property under a will must acknowledge the equitable rights of all other parties under the same will. Buchanan v. McLennan, 192 Ill. 485; Van Schaack v. Leonard, 164 Ill. 607.

In order to put a beneficiary under a will to an election, it is not necessary to show that the testator knew of the legatee's rights and intended to deprive the legatee of them, it being immaterial whether the testator is aware of his want of power, or supposes that the property which he undertakes to give away is his own. Van Schaack v. Leonard, 164 Ill. 607.

The doctrine of election, as applied to wills, and as between inconsistent rights, means that he who would accept the bounty of another must do so upon such terms as the donor may choose to impose, and cannot insist that the provisions in his favor shall be executed, and those to his prejudice annulled, but must accept or reject the instrument in its entirety. Buchanan v. McLennan, 192 Ill. 483; Carper v. Crowl, 149 Ill. 475; Brown v. Pitney, 39 Ill. 472. To the same effect see Ditch v. Sennott, 117 Ill. 367; Woolley v. Schrader, 116 Ill. 37.

Although the doctrine of election is founded on a principle which is just everywhere, its most frequent application has been to devisees and legatees in wills. Brown v. Pitney, 39 Ill. 472.

The doctrine of election has no application to a case where a testator has a part interest in an estate in which a devisee under the will also has an interest, if only the interest owned by the testator is devised. Ditch v. Sennott, 117 Ill. 368; Woolley v. Schrader, 116 Ill. 37. To the same effect see Wilbanks v. Wilbanks, 18 Ill. 20.

Where a will devises to a widow an interest in real estate, her failure to renounce her statutory rights will constitute an election to take under the will, and an abandonment of dower and homestead under the statute. Stunz v. Stunz, 131 Ill. 218. See Brown v. Pitney, 39 Ill. 474 (holding that the same rule applies where the gift is of personalty, if it appears that testator intended it to be in lieu of dower).

Where a testator, intending to dispose of his property, includes in such disposition the property of another person, at the same time giving to such other person an interest in the estate of the testator, such person cannot defeat the disposition and at the same time take under the will, but must make his election between retaining his own property and taking under the will. Carper v. Crowl, 149 Ill. 476; Ditch v. Sennott, 117 Ill. 369; Woolley v. Schrader, 116 Ill. 36; Brown v. Pitney, 39 Ill. 472; Wilbanks v. Wilbanks, 18 Ill. 19.

There can be no election where a will

gives to a widow only that which would pass by operation of law without the will. Ward v. Ward, 134 Ill. 421.

It is indispensable to the application of the doctrine of election, as applied to wills, that there be, first, a plurality of gifts, or alternative rights or claims in the property devised, the choice of one being intended to exclude the choice of the other, and, second, in case the property of the devisee is disposed of by the will, and the devisee chooses to assert his right to such property against the will, that there is a fund for his benefit, given by the will, which can be laid hold of to compensate the parties whose right to take under the will is defeated by the election. Carper v. Crowl, 149 Ill. 477.

To constitute a valid election under a will, the person electing must have full knowledge of the circumstances, and the situation and value of the estate, and an election made without such knowledge will not preclude a new election upon obtaining full information. Wilbanks v. Wilbanks, 18 Ill. 21.

A devise to an heir, although inoperative, compels the heir to make an election between the estate devised and claims adverse to the will. Wilbanks v. Wilbanks, 18 Ill. 20.

Justices' and Constables' Act.

The term "election," used in section 3 of article 11 of the Justices' and Constables' Act (J. & A. ¶ 6981), relating to the form of executions in actions before justices of the peace, refers to a choice by the plaintiff between the two forms of execution provided by the statute, and does not import that plaintiff may have more than one form of execution at any time. Schwarzschild v. Goldstein, 121 Ill. App. 4.

ELECTOR.

One who elects, or one who has the right of choice; a person who has, by law or constitution, the right of voting for an officer; one who has the right to make choice of public officers; one who has a right to vote. Beardstown v. Virginia, 76 Ill. 39.

ELECTRICITY.

A silent, deadly and instantaneous force. Rowe v. Taylorville, etc., Co., 213 Ill. 322; Becker v. Sanitary District, 194 Ill. App. 650.

A subtle and powerful agent. Commonwealth, etc., Co. v. Melville, 210 Ill. 78; Becker v. Sanitary District, 194 Ill. App. 647.

ELEEMOSYNARY CORPORATION.

Corporations of the eleemosynary sort are such as are constituted for the distribution of the free alms or bounty of the founder of them to such persons as he has directed-of which kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges. Board of Education v. Bakewell, 122 Ill. 344; Trustees v. King, 12 Mass. 557.

"An institution established and maintained for the support of indigent persons who became blind or deaf in the service of their country or state is as much eleemosynary as one established for the support of those who were born blind or deaf or who have become so from other All institutions in this state, established and maintained at the public expense for the care, education, and support of the unfortunate, belong to this class of institutions." Wolcott v. Holcomb, 97 Mich. 363.

Eleemosynary corporations, sometimes called "charitable corporations" are such as are created, not for private gain nor profit, but for charitable purpose,-for the administration of charitable trusts. They are distinguished from "civil" cor-Included in the class of porations. eleemosynary corporations are corporations created for the purpose of maintaining hospitals and homes for the sick, insane and poor, and for the purpose of maintaining endowed libraries or colleges. 1 Fletcher Cyclopedia Corporations 86.

ELEMENTS OF THE NATURAL SCIENCES.

The expression "elements of the natu-

Schools Act (J. & A. ¶ 10216), relating to the qualifications of teachers, includes botany, zoology and physics. Polsin v. Rand, 250 Ill. 573.

ELEVATORS.

Buildings used for the storage of grain are indifferently called warehouses, granaries or elevators. In re Swigert, 119 Ill. 91.

ELEVEN O'CLOCK.

In contemplation of law eleven o'clock means from eleven to twelve o'clock-it being eleven o'clock from eleven to twelve. McGovern v. Union, etc., Co., 109 III. 155.

ELIGIBLE.

Legally qualified—as, eligible to office. People v. Hamilton, 24 Ill. App. 612.

This word, as applied to the selection of persons, has two meanings, i.e., "legally qualified," or "fit to be chosen." Per Ld. Chelmsford, Baker v. Lee, 30 L. J. Ch. 631; 8 H. L. Ca. 495.

V. Fit.

ELIMINATED.

A statement in an original brief of counsel that they have "eliminated" from the argument practically all other points, is an abandonment of such other points as grounds for reversal. Merritt v. Crane, 225 Ill. 188.

EMBEZZLE.

The word "embezzle" and the words "fraudulently convert to his own use," mean the same thing, and in both a criminal intent is necessary, but if the acts relied upon as constituting the crime are fraudulently done, they are done with criminal intent. MacNeil's Evidence 481.

EMBEZZLED.

The term "embezzled," used in section ral sciences," used in section 178 of the | 80 of division 1 of the Criminal Code (J. & A. ¶ 3624), relating to embezslement by public officers, means the same as "fraudulently convert to his own use," used in the same section. Spalding v. People, 172 Ill. 56.

EMBEZZLEMENT.

Criminal Code.

The body of the crime of embezzlement, as defined in section 75 of division 1 of the Criminal Code (J. & A. ¶ 3615), consists of many acts done by virtue of the confidential relations existing between the employer and the employee, with funds, money or securities over which the servant is given care or custody, in whole or in part, by virtue of his employment, which separate acts may not be susceptible of direct proof, but the result of which is susceptible of such proof. Ker v. People, 110 III. 646.

Embraces All Wrongful Conduct.

The crime of embezzlement, as defined in section 75 of division 1 of the Criminal Code (J. & A. ¶3615), embraces all wrongful conduct by confidential clerks, agents or servants, and leaves no opportunity for escape from just punishment on technical objections not affecting guilt or innocence. Ker v. People, 110 Ill. 648.

Elements.

One of the elements entering into the definition of embezzlement in various sections of the Criminal Code, is the fiduciary or confidential relation, affording the amplest opportunity to misappropriate money or securities. Ker v. People, 110 Ill. 645. To the same effect see Kibs v. People, 81 Ill. 600.

Must Be of Property of Another.

To constitute the crime of embezzlement under section 75 of division 1 of the Criminal Code (J. & A. ¶ 3615), the property in question must be wholly the property of another, and if the person charged has an interest in such property, no conviction can be had. McElroy v. People, 202 Ill. 476; Rauguth v. People, 186 Ill. 97.

What Constitutes.

The act of a servant in intentionally doing with the property under his control what one must intend to do with property taken in order to commit larceny of it, constitutes embezzlement. Spalding v. People, 172 Ill. 56.

Retention of Deposit.

Where on taking a situation involving the custody of money of the employer an employee deposits a sum of money with the employer as security for the faithful performance of his duties, the retention of such deposit by the employer after the employment has ceased will not constitute embezzlement under section 74 of division 1 of the Criminal Code (J. & A. \P 3614), where it appears that by the agreement between the parties the relation of debtor and creditor was created as to the deposit, and where there was a dispute between the parties as to their rights and liabilities which might be made the subject of a civil action. Mulford v. People, 139 Ill. 595.

Retention of Money Collected by Constable.

The failure of a constable to pay over money collected by him on executions coming into his hands in his official capacity is not embezzlement as defined by section 74 of division 1 of the Criminal Code (J. & A. ¶ 3614). Stoker v. People, 114 Ill. 324.

Conversion of Property of De Facto Corporation.

Fraudulently converting to an agent's own use the property of a de facto corporation will constitute embezzlement under section 75 of division 1 of the Criminal Code (J. & A. ¶ 3615). Kossakowski v. People, 177 Ill. 567.

Loans.

Where one loans or intrusts money to another relying upon his honesty or responsibility for its return, with the stipulated interest, the failure of the party to account will not constitute embezzlement within the meaning of section 75 of division 1 of the Criminal Code (J. & A.

¶ 3615). Rauguth v. People, 186 Ill. 96; Kribs v. People, 82 Ill. 426.

Money Placed in Hands of Another to Loan.

Where money is placed in the hands of a person to be loaned for the owner, the fraudulent conversion of such money to his own use by the person to whom it is intrusted will constitute embezzlement within the meaning of section 75 of division 1 of the Criminal Code (J. & A. ¶ 3615). Rauguth v. People, 186 Ill.

Bankruptcy Act.

To constitute "embezzlement," within the meaning of section 17 of the Bankruptcy Act of 1898, relating to the effect of discharges in bankruptcy, the misappropriation relied on must have been intentional and wilful. Ehrhart v. Rork, 114 Ill. App. 511.

The failure to pay over money collected cannot be deemed to be "embezzlement," within the meaning of section 17 of the Bankruptcy Act of 1898, relating to the effect of discharges in bankruptcy, where there is evidence that the creditor consented to the appropriation of the money collected, and knowingly assumed the relation of an ordinary creditor. Ehrhart v. Rork, 114 Ill. App. 512.

Criminal Intent Essential.

A fraudulent or criminal intention is an essential element of the offense of embezzlement as defined by section 80 of division 1 of the Criminal Code (J. & A. ¶3624). Spalding v. People, 172 Ill. 56; Mulford v. People, 139 Ill. 595.

"Larceny" Distinguished.

The distinguishing feature between larceny at common law, and embezzlement as defined in various sections of the Criminal Code, is the fiduciary character of the defendant. Kibs v. People, 81 Ill. 600.

"Larceny" Compared.

The gist of common law larceny is the felonious taking of what is another's, with the simultaneous intent in the taker

of misappropriating it, but in the statutory embezzlement there is no felonious taking, for the thing comes to the servant by delivery. Spalding v. People, 172 Ill. 56.

Nothing which is larceny at common law can be embezzlement under the Criminal Code. Quinn v. People, 123 Ill. 345; Kibs v. People, 81 Ill. 601.

The statutes creating the crime of embezzlement were passed solely and exclusively to provide for cases which were not larceny at common law. Kibs v. People, 81 Ill. 601.

EMBLEMENTS.

Annual products of soil raised by the labor of a tenant. Keays v. Blinn, 234 Ill. 123, aff'g 137 Ill. App. 477.

EMINENT DOMAIN.

The right of the nation or the state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership or possession of such property for such use upon paying the owner due compensation, to be ascertained according to law. Western, etc., Co. v. Louisville & N. R. Co., 270 Ill. 414.

The power of the sovereign to appropriate private property to public use, limited only by the constitutional provision for compensation. South Park Commissioners v. Ward, 248 Ill. 305.

A practical definition of the term as it is generally understood today is; the right or power to take or damage specific private property for public use upon making just compensation for such property.

3 Fletcher Cyclopedia Corporations 2499.

As Attribute of Sovereignty.

The right of eminent domain is an inherent attribute of sovereignty, existing independently of written constitutions or statutory laws, although it is regulated by appropriate legislation. South Park Commissioners v. Ward, 248 Ill. 305; Sholl v. German, etc., Co., 118 Ill. 431. To the same effect see Western, etc., Co. v. Louisville & N. R. Co., 270 Ill. 414;

Tacoma, etc., Co. v. Chicago, 247 Ill. 199; Illinois, etc., Co. v. St. Louis, I. M. & S. Ry. Co., 208 Ill. 422; Harvey v. Aurora & G. Ry. Co., 174 Ill. 304; Hyde Park v. Oakwoods, etc., Ass'n, 119 Ill. 148; Metropolitan C. Ry. Co. v. Chicago W. D. Ry. Co., 87 Ill. 324; Chicago R. I. & P. R. Co. v. Lake, 71 Ill. 337; Johnson v. Joliet & C. R. Co., 23 Ill. 125.

Source of Power.

The power of eminent domain is by some referred to the feudal theory of tenure, by others to the implied compact theory, but the better opinion is that it is founded on public utility and necessity. Sholl v. German, etc., Co., 118 Ill. 431.

Scope of Power.

The right of eminent domain extends to every kind of property, including not only what is tangible, but all rights and interests of any kind, including easements. South Park Commissioners v. Ward, 248 Ill. 305; Metropolitan C. Ry. Co. v. Chicago W. D. Ry. Co., 87 Ill. 324.

The right of eminent domain does not extend to property donated on an express condition that it be devoted to a use named by the donor, and accepted by the public on such conditions, where the use for which the power is sought to be exercised is inconsistent with that stipulated by the donor. South Park Commissioners v. Ward. 248 Ill. 306. To the same effect see Princeville v. Auten, 77 Ill. 328.

Must Be for Public Use.

The power of eminent domain is not boundless and unrestricted, the legislature being restricted by the requirement that the use must be public and lawful. South Park Commissioners v. Ward, 248 Ill. 305. To the same effect see Ligare v. Chicago, 139 Ill. 64; Sholl v. German, 118 Ill. 431; Smith v. Chicago & W. I. R. Co., 105 Ill. 519; Johnson v. Joliet & C. R. Co., 23 Ill. 125.

Political and Not Judicial Power.

The right of eminent domain is political in its nature and not judicial, belonging exclusively to the legislative branch of the government. Pittsburg, Ft. W. & Co. Ry. Co. v. Sanitary District, 218 Ill. 292. To the same effect see Illinois, etc., Co. v. St. Louis I. M. & S. Ry. Co., 208 Ill. 423; Sholl v. German, etc., Co., 118 Ill. 431; Chicago & E. I. R. Co. v. Wiltse, 116 Ill. 454; Chicago, R. I. & P. R. Co. v. Lake, 71 Ill 336.

State Cannot Divest Itself of Power.

The state cannot divest itself of the power of eminent domain to take private property for public use. South Park Commissioners v. Ward, 248 Ill. 306; Sholl v. German, etc., Co., 118 Ill. 431.

EMIT BILLS OF CREDIT.

The expression "emit bills of credit," used in paragraph 1 of section 10 of article 1 of the Constitution of the United States, conveys to the mind the idea of issuing paper intended to circulate through the community as money, which paper is redeemable at a future day. Linn v. State Bank, 2 Ill. 91.

The word "emit," used in paragraph 1 of section 10 of article 1 of the Constitution of the United States, relating to bills of credit which states are forbidden to issue, is not employed in describing those contracts by which a state binds itself to pay money at a future day for services actually received, or for money borrowed for actual use. Linn v. State Bank, 2 Ill. 91.

EMOLUMENTS.

The profit which is annexed to the possession of office, as salary, fees and perquisites. Bruce v. Dickey, 116 Ill. 535.

The term "emoluments," used in section 16 of article 6 of the Constitution of 1870, fixing the salaries of judges of the supreme and circuit courts, refers to such as belong to the performance of duties, and fixed and prescribed by some regulation, and not something contracted to be paid by agreement between private parties, so as to prevent such a judge from recovering for professional services rendered to a town as attorney at law. Bruce v. Dickey, 116 Ill. 535.

The word "emoluments" in a statute providing that prequisites thereunder assessable for taxation shall be deemed to be such profits of office or employment as arise from "fees or other emoluments, and payable by the crown or by the subject" covers only money and things exchangeable for money, and not, consequently, the occupation of a house rent free without the power of sub-letting or of turning the occupation to pecuniary profit. Rerford Halsbury in Tennant v. Smith [1892] A. C. 150.

EMPANEL.

To write the names of a jury on a schedule, by the sheriff or other officer lawfully authorized. Lyman v. People, 7 Ill. App. 348.

EMPANELED.

No inference can be drawn from the use of the word "empaneled" in a record with reference to the jury, that the jury were sworn. Lyman v. People, 7 Ill. App. 348.

EMPLOY.

A power in the charter of a corporation to "employ," in such manner as it shall determine, the real and personal property which such charter authorizes it to acquire, does not empower it to loan money, the power only conferring authority to employ it in carrying out the objects for which the corporation was created. Calumet, etc., Co. v. Conkling, 273 Ill. 322.

EMPLOYEE.

One employed to perform personal services. Schmidt v. Heath, 178 Ill. App. 651.

Under the Illinois Compensation Act of 1913, defining as an employee "every person in the service of another under any contract of lure, express or implied, oral or written," one who reports for duty as a chauffeur on a trial test, under an arrangement whereby he is to be employed for about three weeks if his services are satisfactory, and is killed before

noon of the first day as the result of falling down an elevator shaft at a building at which he is delivering goods, is an "employee" where he would have been definitely accepted as a chauffeur because the report of one accompanying him to observe his work would have been favorable. Marshall Field & Co. v. The Industrial Commission, 285 Ill. 333.

EMPLOYED.

Employment Act-Imports Joint Act.

Section 7 of the act of 1893, providing that females shall not be "employed" in certain ways named in the act, is two fold in its prohibition, first, that no manufacturer, etc., shall employe a female in a factory or workshop for more than the time fixed by the statute, and second, that no female shall consent to be so employed, thus prohibiting employer and employee from uniting their minds or agreeing upon any longer service in one day than either hours. Ritchie v. People, 155 Ill. 103.

To be "employed" in anything means not only the act of doing it, but also to be engaged to do it; to be under contract or orders to do it. Ritchie v. People, 155 Ill. 103.

EMPLOYER'S LIABILITY INSURANCE.

A species of guaranty insurance. People v. Fidelity, etc., Co., 158 Ill. 82.

EMPLOYMENT.

The act of employing, in another sense, the state of being employed. Ritchie v. People, 155 Ill. 103.

Work; business; occupation; vocation; calling; office; service; commission; trade; profession. Travelers, etc., Ass'n v. Kelsey, 46 Ill. App. 873.

Constitution.

An "employment," within the meaning of the Constitution of 1870, is an agency for a temporary purpose, which ceases when that purpose is accomplished. Constitution of 1870, art. 5, § 24; People

v. Toledo, St. L. & W. R. Co., 267 Ill. 144: Tarantine v. Louisville & N. R. Co., 254 Ill. 631; Lasher v. People, 183 Ill. 235; People v. Loeffler, 175 Ill. 600.

The occupation of the assistants of the county superintendent of schools provided for in section 16 of the Schools Act (J. & A. ¶ 10037), relating to the powers of such superintendent, is not an "employment," within the meaning of the term as defined in section 24 of article 5 of the Constitution of 1870. People ▼. Toledo, St. L. & W. R. Co., 267 Ill. 145.

The fact that a statute empowers railroad conductors, while acting as such, to make arrests on their trains, in certain cases, without a warrant, does not alter the fact that their occupation is an "employment," within the meaning of section 24 of article 5 of the Constitution of 1870. Tarantina v. Louisville & N. R. Co., 254 Ill. 681.

Insurance.

Where a policy of accident insurance provided that in case insured, when injured, should be engaged in any "employment" more hazardous than that specified in his application, the insurer should not be liable, the quoted expression will not include a visit to a state fair in another state for five days, where insured acted as marshal and was injured by a person under arrest. Travelers, etc., Ass'n v. Kelsey, 46 Ill. App. 372.

EMBOLISM.

An affliction of the brain. Dorsey v. Wolcott, 178 Ill. 549.

EMERGENCY.

Any event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency. People v. Board of Supervisors, 21 Ill. App. 274.

EMERGENCY SIGNAL.

An emergency signal, seen by an engineer, means that an emergency exists, and indicates that for the preservation of | ing is "enclosed," is due and may be col-

life or limb, or for some other most cogent reason, the train should be stopped instantly. Cleveland, C., C. & St. L. Ry. Co. v. Ricker, 116 Ill. App. 432.

EMERY WHEEL

A belt smeared with emery stretched over pulleys, and caused to revolve over the pulleys, which furnishes sufficient friction to polish whatever material is placed upon the emery side or top of the belt. Hortsman v. Staver, etc., Co., 153 Ill. App. 181.

ENABLED.

An affidavit of the non residence of a defendant in a chancery proceeding stating that plaintiff's attorney has made diligent efforts to ascertain the residence of defendant but has been "enabled" to do so is not equivalent to an affidavit that such attorney has been "unable" to ascertain such address, the quoted terms being not idem sonans and of opposite meaning. Tobin v. Brooks, 113 Ill. App. 80.

ENACTING CLAUSE.

The section of a bill or statute which establishes the whole document as a law. Pearce v. Vittum, 193 Ill. 193.

"The term 'enacting clause,' should be construed to mean all parts of the statutes which create and define the offense, whether in one or more sections or acts." State v. Bevins, 70 Vt. 575.

"'By the enacting clause,' or 'by statute' as used in the books, is meant such an enacting clause or statute provision, as creates an offence and gives a penalty, when it is said, where an action is given by statute or by the enacting clause, and in another section, or subsequent statute, exceptions are enacted, the plaintiff need. not notice them." Berry v. Stinson, 23 Me. 144.

ENCLOSED.

A subscription to be paid when a build-

lected when the main building is enclosed, though some towers connected with the building have not been enclosed. Snell v. Trustees, 58 Ill. 293.

ENCLOSURE.

Imports land enclosed with something more than the imaginary boundary line, that there should be some visible or tangible obstruction, such as a fence, hedge, or ditch, or something equivalent, for the protection of the premises against encroachment by cattle. Porter v. Aldrich, 39 Vermont 331.

ENCLOSURES NOW SUR-ROUNDING.

A village ordinance fixing the limits of cemeteries at the "enclosures now surrounding" any such cemeteries, refers, by the quoted expression to the boundaries of lands actually prepared and devoted to burial purposes, and does not include lands belonging to the owners of the cemetery and within the same enclosure, but not so prepared and devoted. Concordia, etc., Ass'n v. Minnesota & N. W. R. Co., 121 Ill. 210.

ENCROACHMENT.

A post three feet from the traveled track may constitute an obstruction rather than an encroachment in a highway. Neale v. State, 138 Wis. 484, 487.

INCUMBRANCE.

"An incumbrance within the meaning of covenants must be such that a lawful enforcement to its full extent would evict, and no right of action accrues until the grantor has been evicted, unless it clearly appears that he would be evicted by means of the incumbrance lawfully prosecuted to that end, and when the incumbrance has been exhausted without disturbance of possession or title or right thereto, no action lies." Christy v. Ogle, 33 Ill. 295; Marple v. Scott, 41 Ill. 50. (Wilkinson v. Olin, 136 Ill. App. 531.)

ENDOW.

The word "endow" means giving a benefit to some existing thing; it supposes something to exist either at the time when the gift is made, or when the endowment is to take place; it has no reference at all to building or purchasing, Edwards v. Hall, 6 De G. M. & G. 83.

ENDOWMENT.

A bequest to trustees upon trust to apply the estate in such manner as they should "in their absolute and uncontrolled discretion think proper" for the benefit of a charity is an "endowment" of the charity within the meaning of a Statute placing charities maintained by endowments under a certain jurisdiction. The power of the trustees to divert the endowment does not, for the purpose of the present definition, affect its character, (although, if such diversion were to take place, the jurisdiction might be questioned). In re Gilchrist Educational Trust [1895] 1 Ch. 367.

ENDOWMENT INSURANCE.

An endowment policy is an insurance into which enters the element of life. In one aspect, it is a contract payable in the event of a continuance of life; in the other, in the event of death before the period specified. Brummer v. Cohn, 86 N. Y. 17.

"Sometimes the contract to pay on the death of the insured is conjoined with a contract to pay on the expiration of a fixed period, should he live so long. Such a contract is called a 'contract of endowment insurance,' though, so far as concerns the contract to pay on the expiration of a fixed period it is not, strictly speaking, a contract of life insurance at all." Walker v. Commissioner of Insurance, 103 Mich. 349, quoting Cooke, Ins. § 107.

ENEMY.

Means public enemy, where the whole body of the nation is at war with one another: an enemy is he with whom a nation is at war. Monongehela Ins. Co. v. Chester, 43 Penn. St. 493. 74 Mo. 418.

ENGAGE.

"A person is 'actually engaged in the science of agriculture' when he derives the support of himself and family in whole, or in part, from the tillage and cultivation of fields. He must cultivate something more than a garden, though it may be less than a farm. If the area cultivated can be called a field, it is agriculture, as well in contemplation of law, as in the etymology of the word." Springer v. Lewis, 22 Pa. St. 193.

"It cannot be held, that a person 'did engage in, or carry on, the business of keeping a theatre,' who only offered a room for rent, to be used as a theatre, if he had in fact never used it, or let it to another to be used for that purpose." Gillman v. State, 55 Ala. 250.

ENGAGEMENT.

An agreement in contract; an undertaking. Brauer, etc., Co. v. Plano, etc., Co., 135 Ill. App. 107.

ENGINE.

A machine by which power is applied to the doing of work, particularly one that converts some motive energy, especially heat, into mechanical power; a motor. Roy v. E. St. Louis & S. Ry. Co., 119 Ill. App. 316.

Includes Car with Electric Motor.

The term "engine," used in section 12 of the act of 1874 (J. & A. ¶8824), requiring railroad trains approaching a crossing with another railroad at grade to stop, etc., includes a passenger car equipped with an electric motor by which it is propelled. Roy v. East St. Louis & S. Ry. Co., 119 Ill. App. 316.

ENGINE HOUSE.

A place where locomotive engines are kept. Kincaid v. People, 139 Ill. 217.

ENGINE ROOM.

The room or compartment in a mill, factory or other building where stationary engines are stationed or placed; a room in or attached to a building in which the engine is situated and operated. Kincaid v. People, 139 Ill. 217.

ENGINEER.

The term "engineer," used in section 12 of the act of 1874 (J. & A. ¶8824), requiring railroad trains approaching a crossing with another railroad at grade to stop, etc., includes the motorneer of a passenger car equipped with an electric motor by which it is propelled. Roy v. East St. Louis & S. Ry. Co., 119 Ill. App. 316.

Where a railroad construction contract provides that the work shall be done under the direction of the chief engineer of the receivers of the railroad, that his decision shall be final as to the true construction of the drawings and specifications and that he shall set forth in his final estimate the amount and kind of work performed and materials furnished under the contract and that his final measurements and estimates shall be binding upon both parties, and the contract further provides that the word "engineer" shall be understood to mean the chief engineer or his duly authorized agents, limited by the particular duties respectively intrusted to them, wherever the word "engineer" is used in the contract the general definition applies but when the contract states that a thing shall be done by the "chief engineer," such as the making of the final estimate, it does not apply. Costello v Delano, 274 Ill. 426.

ENGLAND.

"England," in an Act of Parliament, includes Wales and Berwick-upon-Tweed (20 G. 2, c. 42, s. 3); but not Scotland or Ireland. Ex p. Cunningham, Re Mitchell, 53 L. J. Ch. 1067.

ENGLISH EDUCATION.

The expression "English education" has reference to the language employed in giving instruction in the schools, and means an education acquired through the medium of the English language, not including sciences, mathematics, geography, geology, etc., which are taught in all languages, and are no part of such an education. Powell v. Board of Education, 97 Ill. 380.

ENGLISH LANGUAGE.

Constitution of 1870.

Section 18 of the Schedule of the Constitution of 1870, requiring that, inter alia, judicial proceedings shall be in the "English language" does not require that the memorial minutes of a clerk of a court shall consist of English word written out at length, and clearly intelligible to every person acquainted with the English language, but is satisfied if the meaning of such minutes is apparent to the clerk, such minutes being intended for the information of officers of the particular court, and not for that of every person. People v. Petit, 266 Ill. 634; Paulin v. Paulin, 195 Ill. App. 355.

Section 18 of the Schedule of the Constitution of 1870, providing that judicial proceedings shall be preserved and published in the "English language," has reference, by the quoted expression, to the record history of a cause, which is alone preserved and published, and which is for the information of citizens and litigants, and not to all proceedings in a court of justice, the constitutional provision requiring that the record shall be so preserved and published as to be intelligible to a person understanding the English language, without other knowledge. Loehde v. Glos, 265 Ill. 403.

Section 18 of the Schedule of the Constitution of 1870, requiring that judicial proceedings be conducted in the "English language," does not exclude the com-

petency of documentary or other evidence in a foreign language, but merely requires that the meaning of such evidence must be explained and must reach the court or jury in the English language. Loehde v. Glos, 265 Ill. 405.

The fact that a pleading states the amount claimed in terms of francs and centimes is not a violation of section 18 of the Schedule of the Constitution of 1870, requiring that all court proceedings shall be in no other than the "English language," where the same pleading shows the American equivalent for the amounts stated in French money, and where it does not appear that the statement of such equivalent was incorrect. Friedman v. Schreiber, 195 Ill. App. 418.

The expression "English language," used in section 18 of the Schedule of the Constitution of 1870, prescribing the manner in which the records of judicial proceedings shall be preserved and published, refers to a language composed of words spoken or written, and not to single letters of the alphabet, composing words, so that to constitute such language, within the meaning of the Constitution, the written letters must be formed into words which are known as a part of the language, and used in such connection with one another that they which convey some form sentences thought or meaning. Stein v. Meyers, 253 Ill. 205.

The expression "English language," used in section 18 of the Schedule of the Constitution of 1870, refers to the well known spoken and written tongue used by the people of this nation. Stein v. Meyers, 253 Ill. 204.

A jumble of words and letters conveying no meaning to an English-speaking person, such as "fdng deft G withh prem descr in complt; judg on fdng & c," appearing on the record of the entry of a judgment, does not constitute an entry of such judgment in the "English language," within the meaning of section 18 of the Schedule of the Constitution of 1870, prescribing the manner in which judicial records shall be preserved and published. Stein v. Meyers, 253 Ill. 205.

ENLISTMENT.

May signify either the complete fact of entering into the military service, or the first step taken by the recruit towards that end. Tyler v. Pomeroy, 8 Allen (Mass.) 485.

The act of making a contract to serve the government in a subordinate capacity, either in the army or navy. Erichson v. Beach, 40 Conn. 286.

A voluntary engagement to serve as a private soldier for a certain number of years. Babbitt v. United States, 16 Court of Claims 213.

ENTER.

The term "enter," used in section 14 of the Courts Act (J. & A. ¶ 2945), relating to the power of judges of the supreme court in vacation in respect to making judgments and orders, means "cause to be entered," and has reference to a record to be made of the judgment or order by the clerk, and not merely to an announcement thereof. Blatchford v. Newberry, 100 Ill. 491.

ENTER JUDGMENT.

The words "enter judgment," written by the judge upon the papers in a confession proceeding, indicate that the court has considered the matter and intends by those words to render a judgment for the amount confessed in the cognovit, and that such minute or memorandum fully authorizes the spreading on the record by the clerk of the full and formal judgment order. Jasper v. Schlesinger, 22 Ill. App. 641.

ENTERED.

The word "entered," used in section 15 of the Courts Act (J. & A. ¶2946), relating to the powers of judges of the supreme court in vacation in respect to certain judgments, indicates the act of placing the judgment rendered on record,—in other words, enrolling or recording it. Blatchford v. Newberry, 100 III. 489.

ENTERED OF RECORD.

An agreement to submit a controversy to a judge under the act of 1887, now section 26 of the Practice Act (J. & A. ¶8563), relating to oral submissions of controversies, is "entered of record," within the meaning of the act, by being preserved in the judgment or decree at the conclusion of the hearing. West Chicago, etc., Commissioners v. Riddle, 245 Ill. 177; Farwell v. Sturges, 165 Ill. 271.

ENTERPRISE.

An undertaking of hazard; an arduous attempt; an undertaking; something projected and attempted; an attempt or project, particularly an undertaking of some importance or one requiring boldness, energy or perseverance; an arduous or hazardous attempt, as, a warlike enterprise. Uphoff v. Industrial Board, 271 Ill. 317.

Employment Act.

The word "enterprise," as used in paragraph (b) of section 3 of the Act of 1913 (Cal. Ill. Sup. 1916, ¶ 5475[3]), known as the Workmen's Compensation Act, must be regarded as meaning a work of some importance that may properly be considered as arduous or hazardous, and can not be said to embrace the building of a broomcorn shed on a farm. Uphoff v. Industrial Board, 271 Ill. 317.

ENTERTAINING.

"Entertaining" is defined to be "affording entertainment." In re Breslin, 45 Hun, 213.

ENTERTAINMENT.

By the 23 V. c. 27, s. 6, a Refreshment-house requiring a license is a building "kept open for public refreshment, resort, and entertainment." "Entertainment" as there used, means "not diversion or amusement, but the provision of food, drink and whatever else might be reasonably required for the personal com-

fort of guests" (Taylor v. Oram, 31 L. J. M. C. 252; 1 H. & C. 370); e.g., cigars, coffee, ginger-beer or lemonade, the provision of which does not cease to be "entertainment," because no seats are provided for their more comfortable consumption. Muir v. Keay, 44 L. J. M. C. 143; L. R. 10 Q. B. 594; Howes v. Inl. Rev.. 45 L. J. M. C. 86; 46 Ib. 15; 1 Ex. D. 385.

In Taylor v. Oram, sup., Pollock, C. B., said that "Entertainment" in the section then being construed "refers to bodily not mental gratification;" but he also said that, "with reference to some other Acts of Parliament, I should be strongly disposed to think the word meant amusement and gratification of some sort, other than food, meat and drink;" and accordingly the prohibition in Bishop Porteous' Act (21 G. 3, c. 49), against the opening of places "for Public Entertainment or Amusement" on Sunday, is offended by an Aquarium (without a band of music) in connection with which is a museum, a reading-room (without newspapers), and a restaurant (Terry v. Brighton Aquarium Co., 44 L. J. M. C. 173; L. R. 10 Q. B. 306; Warner v. Brighton Aq. Co., 44 L. J. M. C. 175; L. R. 10 Ex. 291). But a place duly and honestly registered as a place of public worship, in which no music but sacred is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive, and contain nothing hostile to religion. where the objects of the promoters may be either to advance their own views of religion or to make science the handmaid of religion, is not used for "public entertainment or amusement" within Porteous' Act. Baxter v. Langley, 38 L. J. M. C. 1; L. R. 4 C. P. 21.

ENTIRE CONTRACT.

The entirety of a contract depends upon the intention of the parties, and not upon the divisibility of the subject matter and while the severable nature of the latter may often assist in determining the intention, it will not overcome the intent to make an entire contract when that is shown, nor will the mode of measuring the price, as by the bushel, ton or pound, change the effect of the agreement when it is entire. Morris v. Wibaux, 159 Ill.

A contract for property to be delivered in installments, where each installment is to be paid for separately, is not an entire contract. Morris v. Wibaux, 159 Ill. 648.

If but one consideration is paid for all the articles, so that it is not possible to determine the amount paid for each, it is an entire contract. Bank of Antigo v. Union, etc., Co., 149 Ill. 349.

Where the purchase is of goods, as a particular lot, or the number of barrels in which the goods are packed, it is an entire contract. Bank of Antigo v. Union, etc., Co., 149 Ill. 350.

ENTIRE LOT OF BROOM BRUSH.

A contract for the delivery of an "entire lot of broom brush" is not complied with by a delivery of less than the entire lot. Taylor v. Beck, 13 Ill. 386.

ENTIRETY.

When land is conveyed to husband and wife, they do not take by moieties, but both are seised of the entirety. 2 Kent's Com. 132. 4 Kent's Com. 362. Parceners, on the other hand, have not an entirety of interest, but each is properly entitled to the whole of a distinct moiety. 2 Bl. Com. 188.

ENTITLED.

The phrase "seized, or possessed of, or entitled to," very frequently occurs in Settlements and Wills, and other instruments where undefined property is dealt with by general words. Let us take the words in their order:—"Entitled to."—These are the most comprehensive words of the phrase under notice. Under them will pass all kinds of property in which

the person spoken of has any title at law or in equity; and this whether the property is in possession, reversion, or remainder (Hughes v. Young, 32 L. J. Ch. 137; Va. obs. of Kindersley, V.-C., Archer v. Kelly, 29 L. J. Ch. 912); but it seems that a mere contingent interest dependent on the happening of some future event will not be comprised in the words "entitled to." Atcherley v. Du Moulin, 2 K. & J. 186, commented on by Wood, V.-C., Hughes v. Young, sup.

In Turner v. Gosset (34 Bea. 593) the phrase "become entitled" in a bequest was, under the circumstances of that case, held to mean "become entitled in possession." It was held otherwise in Hunter v. Hawke, 29 S. J. 556. Jarm. 202, notes (b) and (g). 811, Ib., it is stated that, in gifts over on death before becoming "entitled," "the word 'entitled,' like 'vested,' points prima facie to the right, and not to the possession." But the cases there cited (Commrs. of Charitable Donations v. Cotter, 1 Dr. & War. 498; 2 Dr. & Wal. 615: Henderson v. Kennicott, 18 L. J. Ch. 40; 2 D. G. & S. 492) were distinguished in Re Noyce (55 L. J. Ch. 114; 31 Ch. D. 75; 53 L. T. 688; 34 W. R. 147); and under the circumstances of that latter case, Bacon, V.-C., held that "entitled" meant "entitled in possession," and not "entitled in right." Va. Re Clinton, L. R. 13 Eq. 295; 41 L. J. Ch. 191: Jopp v. Wood, 29 L. J. Ch. 406; 28 Bea. 53; 2 D. G. J. & S. 323: Chorley v. Loveland, 33 Bea. 189; 9 L. T. 596; 12 W. R. 187.

Instruction.

In an action for personal injuries where there is evidence that the injury was wantonly and wilfully inflicted, it is error to instruct the jury that plaintiff is "entitled" to punitive damages, since plaintiff in such action cannot recover such damages as a matter of right, but only in the discretion of the jury, for which reason the instruction invades the province of the jury. Wabash, St. L. & P. Ry. Co. v. Rector, 104 Ill. 303.

ENTITLED TO VOTE.

A dead man is not "entitled to vote;" and therefore to personate a dead elector is not Personation within s. 3, 14 & 15 V. c. 105 (Whiteley v. Chappell, 38 L. J. M. C. 51; L. R. 4 Q. B. 147; 32 J. P. 775); but if the words to be construed were "entitled, or supposed to be entitled" (54 G. 3, c. 93, s. 89), the case would be different (R. v. Martin, Russ. & Ry. 324; R. v. Cramp, Ib. 327). Referring to R. v. Martin, Lush, J. (in Whiteley v. Chappell), said, "If the Court had construed the words 'supposed to be entitled,' as 'alleged to be entitled,' there would be no difficulty in the judgment."

ENTRANCE.

The word "entrance," in a by-law providing that every person who shall construct a new street shall provide an entrance of a width equal to the width of the street, means the mode of access to the new street. Hendon Local Board v. Pounce, 42 Ch. D. 602.

ENTRY.

The term "entry," used in section 1 of the Forcible Entry and Detainer Act (J. & A. ¶5842), is used in its appropriate legal sense, as signifying that remedy which the common law gives to the paramount owner of real property to redress, without legal process, the injury which he sustains when wrongfully deprived of the possession thereof by one having no right thereto. Fort Dearborn Lodge v. Klein, 115 Ill. 191.

ENTRY, WRIT OF.

[L. Fr. brefe d'entre; L. Lat. breve de ingressu.] A species of real action, of great antiquity in English law, and, until a comparatively recent period, the general remedy to recover the possession of lands when wrongfully withheld from the owner. 3 Bl. Com. 180, 183.

Its object was to regain the possession of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged

to the possessory division of real actions. 3 Bl. Com. 180. Roscoe's Real Act. 3. It decided nothing with respect to the right of property, but only restored the demandant to that situation in which he was, (or by law ought to have been,) before the dispossession committed. 3 Bl. Com. 180. There were many varieties of writs of entry under the several titles of Dum fuit non compos mentis, Dum fuit infra ætatem, Dum fuit in prisona, Ad communem legem, In casu proviso, In casu consimili, Cui in vita, Sur cui in divortium, Sur cui vita, Cui ante ante divortium, Quare ejecit infra terminum, Ad terminum qui præteriit, and Causa matrimonii prælocuti; all of which have been abolished in England, by statute 3 & 4 Will. IV. c. 27. Roscoe's Real Actions, 3, 88—100.

The writ of entry was directed to the sheriff, requiring him to command the tenant of the land that he render (præcipe quod reddat) to the demandant, the land in question, which he claims to be his right and inheritance, and of which (de quo, or dequibus) the said tenant, unjustly and without judgment, disseised [him or] his ancestor, within the time limited by law for such actions, or that upon refusal, he do appear in court on such a day, to show wherefore he hath not done it. Reg. Orig. 229. This was the common or simple form of the writ, (called a writ of entry in the quo or quibus), where it was brought against the party himself that did the wrong. 3 Reeves' Hist. Eng. Law, 33. 3 Bl. Com. If, however, he had made any alienation of the land, or it had descended to his heir, that circumstance was required to be alleged in the writ. This led to certain variations in the form, from which the writ was technically called a writ of entry "in the per," "in the per and cui," or, "in the post," according to the number of descents or alienations which had taken place. Reg. Orig. 229.

ENTRY OF A JUDGMENT.

A ministerial act which consists in spreading it upon the record or writing

it at large in a docket or other official book. Phelps v. Hunter, 195 Ill. App. 182; Hunter v. Empire, etc., Co., 191 Ill. App. 639.

EQUAL.

Elections are "equal," within the meaning of section 18 of article 2 of the Constitution of 1870, when the vote of every elector is equal, in its influence on the result, to the vote of every other elector—when each ballot is as effective as every other ballot. People v. Czarnecki, 256 Ill. 327; People v. Hoffman, 116 Ill. 599.

EQUAL AMONG.

The words "equal among" or "equally," when used in a will, mean a division of the estate per capita, unless controlled by the context. Kelley v. Vigas, 112 Ill. 245; Richards v. Miller, 62 Ill. 425; Pitney v. Brown, 44 Ill. 366; Auger v. Tatham, 92 Ill. App. 198; Best v. Farris, 21 Ill. App. 52.

Where a will shows an intention to divide an estate between a daughter and the family of a deceased son, a provision that the remainder of the estate be divided "equal among" testator's heirs at law will be construed to import a division per stirpes, and the usual construction, in such case, that the expression imports a division per capita will not apply. Kelley v. Vigas, 112 Ill. 245.

EQUAL IN AMOUNT.

"The Legislature, by the words 'equal in amount,' [in St. 1887, c. 248, § 3 providing that no renewal of a partner-ship shall be made unless the capital contributed by the special partners is equal in amount or more than the aggregate capital the special partner originally contributed], meant equal in value as a resource or asset of the partnership." Durgin v. Colburn, 176 Mass. 110.

EQUAL PROTECTION OF THE LAW.

The guaranty of "equal protection of the laws," used in the fourteenth amendment to the Constitution of the United States, means that no person or class of persons shall be denied the same protection of the laws, which is enjoyed by other persons or other classes in the same place and in like circumstances. Greene v. Fish, etc., Co., 272 Ill. 153.

A statute does not deny to a party the "equal protection of the laws," within the meaning of the fourteenth amendment to the Constitution of the United States, unless he is treated differently by it from others in the same condition. Price v. City of Elgin, 257 Ill. 67.

EQUALLY DIVIDED.

wm.

The expression "equally divided," used in a will with reference to a distribution of property among devisees, is susceptible of either the construction of a division per stirpes or per capita, and the most natural construction would be that of a division per stirpes, but by the weight of authority the rule of construction is established that such expression, unless controlled by the context, imports a division per capita. Pitney v. Brown, 44 Ill. 366.

The words "equally divided among" are of general and common use in wills, and whether used either singly or in conjunction, their meaning is fully understood by the most illiterate. To utterly ignore them would be to do violence to the established rule of law that if one construction of a will would render a portion of its language meaningless and a different one would give effect to all the language used, the latter must be adopted. Lomax v. Shinn, 162 Ill. 124. Harris v. Rhodes, 130 Ill. App. 239.

Where a testator had four children when he made his will, and one of them predeceased the testator a devise of a remainder in property to testator's "children," without further indication as to whether the deceased child was included, but providing that such property should be "equally divided between" them, indicates, by the quoted expression, an intention to give the property to the individuals constituting his children when

he made his will., Rudolph v. Rudolph, 207 Ill. 275.

EQUIPMENT.

"Equipment," as applied to railroads, has been defined to be "the necessary adjuncts of a railway, as cars, locomotives." People v. St. Louis, A. & T. H. R. R. Co., 176 Ill. 522.

EQUITABLE ASSIGNMENT.

Such an assignment as gives the assignee a title which, though not cognizable at law, equity will recognize and protect. Story v. Hull, 143 Ill. 510; North Chicago S. R. Co. v. Ackley, 58 Ill. App. 579.

"Any order, writing or act which makes an appropriation of a fund, amounts to an equitable assignment of the fund." Steingrebe v. French, etc., Co., 83 Ill. App. 590; Mason v. Chicago, etc., Co., 77 Ill. App. 21.

An agreement between a debtor and creditor that the debt owing should be paid out of a specific fund coming to the debtor will operate as an equitable assignment of such fund, or as an equitable charge thereon. Gillett v. Hickling, 16 Ill. App. 400.

To constitute an equitable assignment there must be an actual appropriation of the fund, or of some designated part, proportion or per cent of it. Story v. Hull, 143 Ill. 511; North Chicago S. R. Co. v. Ackley, 58 Ill. App. 579.

In order to constitute an equitable assignment, no particular form of words is necessary, and any words are sufficient which shows an intention or transferring or appropriating the chose in action to the assignee for a valuable consideration. Savage v. Gregg, 150 Ill. 168; Steingreber v. French, etc., Co., 83 Ill. App. 590; Mason v. Chicago, etc., Co., 77 Ill. App. 21.

EQUITABLE CONVERSION.

A change of property from real into personal or from personal into real, not actually taking place but presumed to exist only by construction or intendment of equity. Greenwood v. Greenwood, 178 Ill. 402.

That change in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, and transmissible and descendible as such. Haward v. Peavey, 128 Ill. 435.

The notional alteration of land into money, or money into land, in accordance with a direction to that effect of a testator or settler, and in pursuance of the equitable doctrine that what is agreed or imperatively directed to be done is already done, or as good as done. Ducker v. Burnham, 146 Ill. 18.

Basis of Doctrine.

The doctrine of equitable conversion rests on the maxim that equity regards that as done which ought to be done, and under that rule real estate may, under proper circumstances, be regarded, in equity, as personal property and personal estate may be regarded as real, and transmissible and descendible as such. Rodisch v. Moore, 266 Ill. 109; Rhodes v. Meredith, 260 Ill. 143; Adams v. Peabody, etc., Co., 230 Ill. 475; Haward v. Peavey, 128 Ill. 435. To the same effect see Covey v. Dinsmoor, 226 Ill. 445; Greenwood v. Greenwood, 178 Ill. 402; Lombard v. Chicago, etc., Congregation, 64 Ill. 481; Rankin v. Rankin, 36 Ill. 299.

When Applicable.

The doctrine of equitable conversion is applicable, as a general thing, when land is directed by a will or other instrument to be converted into money for a particular purpose, such as the payment of debts, but where land is sold by the order of court for any purpose, the character of the property is changed only so far as may be necessary to accomplish the particular purpose. The conversion of real into personal property, or personal into real property, under a power in a will, takes place only for the purposes for which it is authorized. Where these purposes fail or do not take effect in fact or in law, the property is con-

sidered as remaining in its former condition. Where an executor sells real estate of his testator to pay his debts under a power contained in a will, the conversion of the realty into personalty is completed to all intents and purposes only to the extent, to which the purchase money is required for the particular objects, for which the sale takes place; and the excess, though in the form of money. remains impressed with character of real estate for the purpose of determining who is entitled to receive it. Smith v. Smith, 174 Ill. 59. Citing Cronise v. Hardt, 47 Md. 433; 3 Pomeroy Eq. Jur. 1167; 6 Am. & Eng. Ency. of Law, p. 671.

Cannot Defeat Intention of Testator.

The doctrine of equitable conversion will not be allowed to defeat the clearly expressed intention of a testator. Rhodes v. Meredith, 260 Ill. 144; Adams v. Peabody, 230 Ill. 475. To the same effect see Covey v. Dinsmoor, 226 Ill. 445.

What Constitutes.

A sale under a power expressing an absolute intention of the donor that the land shall be sold and converted into money operates as an equitable conversion, and fixes on the land the quality of money. Rodisch v. Moore, 266 Ill. 109.

Where a conditional power to sell is conferred, and a sale is made without the happening of the conditions upon which the sale is authorized, the contract of sale will not affect an equitable conversion. Rodisch v. Moore, 266 Ill. 109.

When a valid, enforcible contract has been made for the sale of real estate, as between the vendor and vendee, equity, by the doctrine of equitable conversion, regards the vendee as the owner of the land and the vendor as the owner of the purchase money, which is personalty, the vendor being the trustee of the naked legal title for the vendee, and the vendee being trustee of the purchase money for Rhodes v. Meredith, 260 the vendor. Ill. 143. To the same effect see Covey v. Dinsmoor, 226 Ill. 445; Lewis v. Shearer, 189 Ill. 186; Lombard v. Chicago, etc., Congregation, 64 Ill. 481.

Where the owner of real estate makes a valid contract for its sale, the nature of his estate, by the doctrine of equitable conversion, is changed, and the real estate will be regarded as personal property, and in case of the death of the vendor before performance, will be treated as assets in the hands of his personal representative. Rhodes v. Meredith, 260 Ill. 143.

Where a conversion directed in a will is made dependent on the will or discretion of the executor, no equitable conversion will take place, and the conversion will not be regarded as consummated in law until consummated in fact. Ducker v. Burnham, 146 Ill. 18; Haward v. Peavey, 128 Ill. 436.

In order to work an equitable conversion while the property is unchanged in form, it is not essential that there be in the will an express declaration that the land be treated as money, or that the money be treated as land, but there must be an expression in some form of an absolute intention that the land shall be sold and turned into money, or that the money shall be expended in the purchase of land. Haward v. Peavey, 128 Ill. 435.

Time of Conversion.

Where a will directs a sale of lands and a payment of the proceeds to legatees, equity will, by the doctrine of equitable conversion, regard the conversion as having taken place at the death of the testator, and the legatees will take the proceeds as personal property. Greenwood v. Greenwood, 178 Ill. 402. To the same effect see Glover v. Condell, 163 Ill 580; Crerar v. Williams, 145 Ill. 640; Jennings v. Smith, 29 Ill. 121; Baker v. Copenbarger, 15 Ill. 104.

EQUITABLE ESTATE.

Implies Beneficial Use.

An "equitable estate" implies the right to the beneficial use of the estate or its income or proceeds. Such an estate would carry with it the same incidents as a legal estate subject to the limitations of the devise, and the owner would have the power of alienation, and upon his death it would be subject to his debts. King v. King, 168 Ill. 284.

Dower Act.

The expression "equitable estates," used in section 49 of the Wills Act in force in 1836, now section 1 of the Dower Act (J. & A. ¶ 4237), prescribing what estates are subject to dower, is to be understood as meaning equitable estates of inheritance. Davenport v. Farrar, 2 III. 316.

EQUITABLE INTEREST.

An interest which although lacking in the characteristics of a legal estate, the owner may enforce in a court of chancery. Bowman v. People, 82 III. 249.

EQUITABLE LEVY.

Creditor's Bill As.

The filing of a creditor's bill, and service of process, creating a lien on the equitable assets of the judgment debtor, has been aptly termed an equitable levy. Davidson v. Burke, 143 Ill. 148; King v. Goodwin, 130 Ill. 108.

Lis Pendens As.

Where a bill is brought to impeach a conveyance of land, the lis pendens operates as an equitable levy on such land, although complainant had no judgment lien thereon, or that when the decree of sale was rendered the judgment lien had expired. Davidson v. Burke, 143 Ill. 150.

EQUITABLE LIEN.

One which a court of chancery recognizes, as dictinct from strictly legal rights. Tinsley v. Durfey, 99 Ill. App. 243.

A lien such as exists in equity, and of which courts of equity alone take cognizance. Palmyra v. Warren, 114 Ill. App. 564.

Nature.

It may be generally stated that equitable liens arise from constructive trusts, and are therefore wholly independent of the possession of the thing to which they are attached as an incumbrance, and can only be enforced in equity. Palmyra v. Warren, 114 Ill. App. 564.

Lien at Law Distinguished.

An equitable lien differs from a lien at law in that it operates after possession has been changed and is available by way of charge instead of detainer. Palmyra v. Warren, 114 Ill. App. 565.

EQUITABLE MORTGAGE.

Mortgage by Absolute Deed.

A mortgage created by a deed absolute in form and a subsequent unsealed agreement to re-convey is an equitable mortgage as distinguished from a legal mortgage. Fitch v. Miller, 200 Ill. 178.

Agreement to Pay Out of Property As.

An agreement that certain claims shall be paid out of certain property is held to be an equitable mortgage. Tinsley v. Durfey, 99 Ill. App. 243.

EQUITABLE WASTE.

Such acts as at law would not be esteemed to be waste under the circumstances of the case, but which in the view of the court of equity are so esteemed from their manifest injury to the inheritance, although they are not inconsistent with the legal rights of the party committing them, that which a prudent man would not do with his own property. Gannon v. Peterson, 193 Ill. 381, 382.

EQUITY.

A right which is established and enforced in accordance with the principles of equity jurisprudence under some general principle or acknowledged rule governing courts of equity. Steger v. Traveling Men's, etc., Ass'n, 208 Ill. 244.

EQUITY OF REDEMPTION.

A right to redeem from the mortgage. Scates v. King, 110 Ill. 465.

The right of the mortgagor to redeem

the land, on equitable terms at any time before the right to do so was barred by foreclosure. Esker v. Heffernan, 159 Ill. 42; Barrett v. Hinckley, 124 Ill. 43.

A right in equity on payment of principal, interest and costs within a reasonable time, to call for a reconveyance of the lands. Hall v. Byrne, 2 Ill. 142.

EQUIVOCATION.

Where a testator devises property to the "four boys," parol proof that testator was survived by seven sons creates an equivocation. Bradley v. Rees, 113 Ill. 334.

ERECT.

"The word 'erect' may mean 'to build,' or it may mean 'to set up' or 'found' or 'establish' or 'institute' according to the context. In the connection here used [a contract to erect a station] it means 'to set up,' 'to establish.' Port Hudson & C. R. Co. v. Richards, 90 Mich. 579.

ERECTED.

A subscription to be paid when a building of a certain sort is "erected" is due when the walls are up and the material is on the ground to complete it. Johnston v. Ewing, etc., University, 35 Ill. 528.

A house built at the corner of an old street and of a new one and whose front and main entrance are in the old street, is "erected on the side of a new street," within the meaning of a statute regulating the height of buildings so to be erected. London v. Lawrance, [1893] 2 Q. B. 228.

ERECTION.

"Erection used in conducting the business of any mine," s. 29, 24 & 25 V. c. 97; a scaffold erected at some distance above the bottom of a mine, for the purpose of working a vein of coal on a level with the scaffold, is within these words (R. v. Whittingham, 9 C. & P. 234); and so is a wooden trough by means of which water is conveyed to, and for the pur-

poses of, a mine. Barwell v. Winterstoke, 19 L. J. Q. B. 206; 14 Q. B. 704; 15 L. T. O. S. 23.

"As used in the laws, the words 'erection' and 'construction' seem to be synonymous in their meaning, and in the common acceptance when applied to a house, they mean the building of it by putting together the necessary material and raising it; but it does not require a strained sense to bring the removal of a house from the place where it has been put together, and placing it in position or setting it up in another place, within the meaning of those words as used in the law." Burke v. Brown, 10 Tex. Civ. Ap. 299.

ERRONEOUS JUDGMENT.

"An erroneous judgment is one rendered according to the course and practice of the courts, but contrary to law.

* * An irregular judgment is one contrary to the course and practice of the courts." Wolfe v. Davis, 74 N. C. 599.

ERRONEOUSLY ENTERED UP.

The expression "erroneously entered up," used in section 15 of the Courts Act (J. & A. ¶ 2946), relating to the powers of judges of the supreme court in vacation in respect to certain judgments, expresses only an error in the clerical act of placing a judgment on record, and implies that the judgment enrolled or recorded is not the judgment rendered or given. Blatchford v. Newberry, 100 Ill. 490.

ERRORS IN FACT.

The expression "errors in fact," used in section 89 of the Practice Act (J. & A. ¶ 8626), abolishing the writ of error coram nobis, is a phrase of rather definite meaning, referring to error in the process, such as non-age, and, at common law, coverture of the plaintiff, and does not refer to error in the judgment or decree itself. Kihlholz v. Wolff, 8 Ill. App. 373.

ERRORS OF LAW.

When a person is truly acquainted with the existence or non-existence of the facts, but is ignorant of the legal consequences, he is under an error of law. Mowatt v. Wright, 1 Wend. (N. Y.) 360.

ESCAPE.

As a verb to flee from; to get out of the way of; to hasten away. As a noun, "the act of fleeing from danger." Hammond v. Feople 199 Ill. 182.

Whenever a person, once under arrest, is at large, unless by the consent of the creditor, or the authority of the law, it is an escape. Adams v. Turrentine, 8 Ired. Law (N. C.) 151.

An escape is either negligent or voluntary; negligent, where the party escapes without the consent of the officer; voluntary, where the officer permits him to go at large. Butler v. Washburn, 25 N. H. 258.

The ancient doctrine of the common law that the right of self-defense did not arise until every effort to escape, even to retreating until an impassable wall or something of that nature had been reached, has been supplanted in America by the doctrine that a man, if unlawfully assaulted in a place where he has a right to be, and put in danger, real or reasonably apparent, of losing his life or receiving great bodily harm, is not required to endeavor to escape from his assailant, but may stand his ground, and repel force with force, even to the taking of the life of his assailant, if necessary or in good reason apparently necessary, for the preservation of his own life or to protect himself from receiving great bodily harm. It is not necessary to the right of self-defense that a party having otherwise the right to exercise it, cannot "escape" the danger by fleeing from his assailant. Hammond v. People, 199 Ill. 173.

ESCROW.

The conditional delivery of a deed or instrument in writing which is not to be

operative or take effect as an absolute delivery until certain conditions shall be performed. Ryan v. Cooke, 68 Ill. App. 594; Baum v. Parkhurst, 26 Ill. App. 130.

A conditional delivery to a stranger, to be kept by him until certain conditions are performed, and then to be delivered to the grantee. Skinner v. Baker, 79 Ill. 499; Stone v. Duvall, 77 Ill. 480.

A deed delivered to a stranger, to be by him delivered to the grantee upon the happening of certain conditions, upon which last delivery the transmission of title is complete. Ryan v. Cooke, 172 Ill. 311.

A deed is said to be delivered as an escrow where the delivery is conditional—that is, where it is delivered to a third person to keep till something is done by the grantee or some other person. Fitzgerald v. Allen, 240 Ill. 94; Skinner v. Baker, 79 Ill. 499.

Elements.

The intention of the grantor is the controlling element in respect to the sufficiency of a delivery in escrow. Fitzgerald v. Allen, 240 Ill. 94; Ottawa, O. & F. R. V. R. Co. v. Hall, 1 Ill. App. 617.

In order to constitute an effective delivery in escrow, the condition which is an essential element of the escrow need not be limited to the performance of acts by the grantee, but the delivery may be conditioned upon acts of a third person. Stone v. Duvall, 77 Ill. 480.

Grantee Cannot Be Escrow Holder.

A deed or other instrument cannot be delivered to the grantee in escrow. Ryan v. Cooke, 172 Ill. 311 (aff'g 68 Ill. App. 595).

To constitute a delivery in escrow, the deed or other instrument must be delivered to a stranger, that is, to a person not a party to the contract. Price v. Pittsburg, Ft. W. & C. R. Co., 34 Ill. 36; Baum v. Parkhurst, 26 Ill. App. 130.

It is essential to the delivery of a deed in escrow that it pass beyond the dominion and control of the grantor. Fitzgerald v. Allen, 240 III. 93.

A delivery to one of the officers of a corporation is not a good delivery in es-

crow for the benefit of the corporation. Price v. Pittsburg, Ft. W. & W. R. Co., 34 Ill. 36. But see Ottawa, O. & F. R. V. R. Co. v. Hall, 1 Ill. App. 616 (holding that this decision was limited to cases where the officer has authority to transact the business in question for his principal, and did not apply to cases where the officer acted as a mere volunteer, without authority).

A delivery to a partner is not a good delivery in escrow for the benefit of the partnership. Ryan v. Cooke, 68 III. App. 595.

Nature.

The escrow holder holds the things delivered in escrow as the agent and representative of those for whose benefit the subsequent acts are to be performed. De Graff v. Manz, 251 Ill. 537.

Effect.

A deed delivered as an escrow, to be delivered by the depositary to the grantee upon the happening of a future event, is not operative to convey title, and has no effect as a conveyance until the event happens and the second delivery is made or the grantee becomes absolutely entitled to such delivery, and an unauthorized delivery before the happening of such event vests no rights in the grantee. Grindle v. Grindle, 240 Ill. 149. To the same effect see Ottawa, O. & F. R. V. R. Co. v. Hall, 1 Ill. App. 619.

Where a deed is deposited as an escrow, it is nothing more than a mere scroll until the condition is performed, which makes its delivery obligatory. Fitch v. Miller, 200 Ill. 180. To the same effect see Leiter v. Pike, 127 Ill. 326.

Delivery of Note or Contract As.

A promissory note or other simple contract in writing, as well as a deed, may be delivered in escrow. Ryan v. Cooke, 172 Ill. 311; Foy v. Blackstone, 31 Ill. 541; Ryan v. Cooke, 68 Ill. App. 595; Baum v. Parkhurst, 26 Ill. App. 131.

ESPECIAL CARE.

The expression "especial care," used with reference to negligence, has no fixed

legal significance. Chicago & N. W. Ry. Co. v. Clark, 2 Ill. App. 124.

ESPECIALLY CAREFUL.

In an action to recover for death due to injuries caused by a horse becoming frightened by a switching engine, where there was evidence that deceased knew that the horse was afraid of the cars, but nevertheless drove him where the switching was being carried on, and that he had frequently done so in the past without accident, an instruction that if the jury believed that the train men knew of the character of the horse, it was their duty to be "especially careful" in operating the engine in the vicinity of the horse, is erroneous as excluding the consideration that the trainmen may have supposed that under the control of deceased the character of the horse was not an element of danger, they having frequently passed it with the engine without accident. and because the expression might be construed by prejudiced jurors, if any were on the panel, in such way as they wished. Chicago & N. W. Ry. Co. v. Clark, 2 Ill. App. 124.

ESTABLISH.

The term "establish," used in section 2 of the act of 1901 (J. & A. ¶ 11144), relating to the appointment of commissioners to settle the boundaries between adjoining landowners, refers to the section line run by the government surveyors, and an order made in pursuance of a petition under the section, empowering the commissioners to "establish" such line, does not warrant them in establishing a line of their own, irrespective of that established by the government. Faucher v. Tuteweiler, 76 III. 196.

A city charter empowering the city to "establish and regulate markets" includes the power to purchase the site and the erection of the necessary buildings and stalls upon it, and when provided to adopt such rules in regard to it and to the business there transacted as may be deemed just and reasonable. Caldwell v. Alton, 33 Ill. 418.

ESTABLISHED BY LAW.

Ex vi terminorum, means declared by legislative enactment. Dane v. Smith, 54 Ala. 49.

ESTATE.

Lord Coke's Definition.

Estate signifies such inheritance, freehold, term of years, tenancy by statute merchant, staple, elegit, or the like, as any man hath in lands or tenements. Ball v. Chadwick, 46 Ill. 32.

Strictly speaking, expresses the title or interest that one hath in lands or tenements. But, in common parlance, the word estate, used with the words real and personal, has got to signify all the subjects of property, and to be equivalent to the more technical expression of things real and personal. Bates v. Sparrell, 10 Mass. 324.

In its most extreme sense, it signifies everything of which riches or fortune may consist. Ayres v. Lawrence, 59 N. Y. 198.

Broad Meaning.

The word "estate" has a broad significance, including personalty. North v. Graham, 235 Ill. 185.

Technical Meaning.

In its primary and technical sense the word "estate" refers only to an interest in land, and doubtless that was its meaning under the common law definition of possibility of reverter. North v. Graham, 235 III. 185.

At Common Law.

At common law where a testator in devising real estate omitted the word "heirs" but used the word "estate," the latter word was held to pass the fee in many cases, in the absence of qualifying language. Thomas v. Miller, 161 Ill. 67.

As Including All Property Interests.

The term "estate," as used in section 1 of the Wills Act (J. & A. ¶ 11542), and the term "estates," used in section 1 of the Descent Act (J. & A. ¶ 4202) con-

trolling the descent and devise of property, refers to all interests in property to which the deceased shall be entitled. North v. Graham, 235 Ill. 185.

Will.

Under section 13 of the Conveyance Act (J. & A. ¶ 2245), providing that words of inheritance shall not be necessary in a conveyance or devise to pass the fee to real estate, the word "estate," used in a will, is of no special bearing on the question whether the testator intended to devise a fee or a less estate. Thomas v. Miller, 161 Ill. 68.

Contingent Remainder.

Strictly speaking a contingent remainder does not rise to the dignity of an estate, and confers no interest in the seizin. Butterfield v. Sawyer, 187 Ill. 602.

"Heirs" Distinguished.

A will devising a life estate with reversion to testator's "estate" on the death of the life tenant uses the quoted term with reference to the subject matter with which the testator was dealing, and is not equivalent to "heirs," so that a contingent remainder is created to take effect at the death of the life tenant in those who may then answer the description of the testator's heirs. Downing v. Grigsby, 251 Ill. 573.

Descent Act.

The term "estates," used in section 1 of the Descent Act (J. & A. ¶ 4202), includes the reversion to the grantor in a deed conveying property to a trustee of a church, but providing that in case the property shall cease to be used or occupied for a church or meeting house the property should revert to the grantor. North v. Graham, 235 Ill. 186.

ESTATE AND EFFECTS OF THE COMPANY.

Section 5 of the act of 1874 (J. & A. ¶ 6685), empowering receivers appointed under the act to take charge of the "es-

tate and effects" of the company, refers, by the quoted expression, to the estate and effects owned by the company, and does not include power to impeach a transaction which the corporation, as between the parties, could not have impeached, although the creditors might have done so. Republic, etc., Co. v. Swigert, 135 Ill. 175.

The goodwill is included in "other the estate and effects" of a partnership. Stewart v. Gladstone, 47 L. J. Ch. 423; 10 Ch. D. 626.

ESTATE AND INTEREST.

A contract for the sale of a person's "estate and interest" in a business property and in the business, will carry the goodwill. Pearson v. Pearson, 54 L. J. Ch. 32; 27 Ch. D. 145.

ESTATE AT SUFFERANCE.

An estate at sufferance is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all. Jackson v. Cairns, 20 John. (N. Y.) 305.

ESTATE AT WILL.

A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant, by force of this lease, obtains possession. 2 Bl. Com. 145. 4 Kent's Com. 110. Litt. § 68. Or it is where lands are let without limiting any certain and determinate estate. Id. 2 Crabb's Real Prop. 403, § 1543. Cruise's Dig. tit. ix. ch. 1.

Strictly speaking, an estate at will is where one man lets land to another to hold at the will of the lessor; the agreement expressly providing that it shall be held at the will of the lessor. Sarsfield v. Healy, 50 Barb. (N. Y.) 246.

An estate at will, in the primary and technical sense of that expression, was created by grant or contract, whereby one man lets land to another to hold, at the will of the lessor. Den v. Drake, 2 Green (N. J.) 529.

ESTATE BY THE CURTESY.

A species of life estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seised in fee during the marriage, provided he had issue by her, born alive, and capable of inheriting her estate.

1 Steph. Com. 246. 2 Bl. Com. 126. Cruise's Dig. tit. v. 2 Crabb's Real Prop. 97, § 1074. 1 Hilliard's Real Prop. 110. See 4 Kent's Com. 27.

"An estate by the curtesy is an estate for life, created by act of law, which is defined as follows: When a man marries a woman, seized at any time during the coverture of an estate of inheritance, in severalty, in coparcenary or in common and has issue by her born alive, and which might by possibility inherit the same estate as heir to the wife, and the wife dies in the lifetime of the husband, he holds the lands during his life by the curtesy of England." Hutchinson v. Exton, 53 N. J. Eq. 690. Quoting Bouv. Law Dict. p. 478, 4 Kent. Com. 27.

ESTATE BY ENTIRETIES.

"At common law a devise to husband and wife vested in them an estate by entireties; not strictly a joint tenancy but * * "one indivisible estate in them both and the survivor of them." Phelps v. Simons, 159 Mass. 417, quoting Wills, J. in Wales v. Coffin, 13 Allen, 213, 215, and citing Pierce v. Chace, 108 Mass 254; Proy v. Stebbins, 141 Mass. 219; Donahue v. Hubbard, 154 Mass. 537; Morris v. McCarty, 158 Mass. 11.

ESTATE DURING COVERTURE.

The estate by which, at common law, a husband held, in right of his wife, all her lands in possession, and owned the rents and profits thereof absolutely. Bozarth v. Largent, 128 Ill. 102.

Curtesy Initiate Compared.

The estate during coverture, at common law, differed from that of curtesy initiate, in being a vested estate in possession, while the latter was a contingent

future estate. Bozarth v. Largent, 128 Ill. 102.

Birth of Issue Unnecessary.

The estate known at common law as the estate during coverture continued during the joint lives of husband and wife, without regard to the birth of issue. Bozartn v. Largent, 128 Ill. 102.

ESTATE FOR LIFE.

A freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain event. Williams v. Ratcliff, 42 Miss. 154.

ESTATE FOR YEARS.

A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certan number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 Steph. Com. 263, 264.

ESTATE HELD IN TRUST.

An estate, where the legal estate, title, or ownership, is in one person, denominated the trustee, but held for the benefit and use of some other person, who is entitled to the income or profit thereof. Catlin v. Hull, 21 Vt. 157.

ESTATE IN COMMON.

An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 Steph. Com. 323. See Tenancy in common. See Cruise's Dig. 390, et seq. notes.

ESTATE IN COPARCENARY.

An estate acquired by two or more persons, (usually females,) by descent from the same ancestor. * * 2 Bl. Com. 187. 1 Steph. Com. 319. Cruise's Dig. tit. xix. See Coparcenary. See 4 Kent's Com. 366. 2 Greenleaf's Cruise's Dig. 382, notes.

ESTATE IN DOWER.

A species of life estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. 1 Steph. Com. 249. 2 Bl. Com. 129. Cruise's Dig. tit. vi. 2 Crabb's Real Prop. 124, § 1117. 4 Kent's Com. 35. See Dower.

ESTATE IN EXPECTANCY.

An estate where the right to the pernancy of the profits is postponed to some future period. Cruise's Dig. tit. xvi. chap. 1, sect. 1.

ESTATE IN FEE SIMPLE.

An estate to a man and his heirs forever. Hale's Anal. sect. xxx. A species of estate of inheritance which a man has, to hold to him and his heirs general, that is, his heirs whether lineal or collateral, male or female; and which is often called an estate in fee, without the addition of the word simple. 1 Steph. Com. 220. 2 Crabb's Real Prop. 6.—The entire and absolute interest and property in land. Cruise's Dig. tit. i. sect. 44.

ESTATE IN FEE SIMPLE ABSOLUTE.

An estate which is limited absolutely to a man and his heirs forever, without any limitation or condition. Frisby v. Ballance, 7 Ill. 144.

The expression "estate in fee simple absolute," used in section 7 of the Conveyances Act (J. & R. ¶ 2238), relating

to the inurement of after acquired title to the grantee, means a perfect title, or the entire and absolute interest and property in the land, than which no one can have a greater estate. Frink v. Darst, 14 Ill. 308.

ESTATE IN JOINT TENANCY.

An estate in lands or tenements granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 Bl. Com. 180. 2 Crabb's Real Prop. 937. Cruise's Dig. tit. xviii. ch. 1, sect. 2.—An estate acquired by two or more persons in the same land, by the same title, (not being a title by descent,) and at the same period; and without any limitation by words importing that they are to take in distinct shares. 1 Steph. Com. 312.

ESTATE IN LAND.

Such interest as the tenant hath therein. Beall v. Holmes, 6 Harr. & J. (Md.) 208. Quoting 2 Bl. Com. 103.

ESTATE IN POSSESSION.

An estate whereby a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance, or contingency. 2 Bl. Com. 163. An estate where the tenant is in actual pernancy, or receipt of the rents and other advantages arising therefrom. Id. ibid. 2 Crabb's Real Prop. 958, § 2322. Cruise's Dig. tit. xvi. ch. 1, sect. 1.

ESTATE IN REMAINDER.

One limited to take effect and be enjoyed after another is determined. Burleigh v. Clough, 52 N. Hamp. 273.

ESTATE TAIL.

An estate of inheritance which, instead of descending to heirs generally, descended to the heirs of the donee's body or some class of such heirs, and through them to like heirs in a direct line, in a regular order and course of descent, so long as such heirs existed, and upon the extinction of the specified issue the estate determined; an estate of inheritance descendible to some particular heirs, only, of the person to whom it was granted. Kolmer v. Miles, 270 Ill. 22.

An estate created where lands and tenements are given to one and the heirs of his body begotten, and may be either general or special. Butler v. Huestis, 68 Ill. 599.

"It is a rule of law that where an estate is devised to the 'heirs' or 'heirs of the body' of a person to whom a prior estate of freehold has been given, the heirs take by descent, and not by purchase, and that an estate in fee simple or in fee tail is created in the ancestor." Van Grutten v. Foxwell, [1897] A. C. 662.

Origin.

Estates tail came into general use upon the construction by the courts of the statute de donis conditionalibus (13 Edw. 1, c. 1, sec. 1. Lehndorf v. Cope, 122 Ill. 328.

Creation.

In a grant of lands, words of inheritance were necessary at common law. to the creation of a fee, but in the creation of a fee tail there must also be words of procreation, indicating the body out of which the heirs were to issue, or by whom they were to be begotten. ordinary formula was to make the gift or grant to the donee, as the grantee was called, "and the heirs of his body," or "her heirs upon her body to be begotten," or "upon her body to be begotten by A;" but there was no especial efficacy in these particular forms of words, and it was requisite, only, that in addition to limitation to "heirs," the description of the heirs should be such that it should appear they were to be the issue of a particular person. Lehndorf v. Cope, 122 Ill. 328. To the same effect see Butler v. Huestis, 68 Ill. 599.

Classification.

Estates in fee tail are of two kinds, estates tail general, and estates tail spe-

cial. Lehndorf v. Cope, 122 Ill. 328; Butler v. Huestis, 68 Ill. 599.

ESTATE TAIL GENERAL.

Blackstone's Definition.

An estate tail where the grant was to one and the heirs of his body generally, in which his issue in general, by each and all marriages, are capable of taking per formam doni. Lehndorf v. Cope, 122 Ill. 328.

ESTATE TAIL SPECIAL.

An estate tail in which the gift or grant was restricted to certain heirs or class of heirs of the donee's body. Lehndorf v. Cope, 122 Ill. 328.

ESTIMATE.

"The objection to the verdict, that the jury have used the word 'estimate,' instead of the word 'assess,' in declaring the amount of the damages awarded by the finding, is not well taken. * * * These words are equivalent, and either may be used. They mean 'to fix' the amount of the damages, or the value of the thing to be ascertained. This is enough." Roddy v. McGetrick, 49 Ala. 162.

ESTIMATED.

The word "estimated," used in a contract with reference to an amount of coal to be delivered thereunder, means "more or less; subject to slight variations from transportation accidents and the impossibility of exact measurements until actual delivery," having much the same effect as the word "say," when used before a statement of quantity in a business correspondence. Hunter W. Finch & Co. v. Zenith, etc., Co., 146 Ill. App. 277.

Contract.

A contract to deliver coal "estimated tonnage 50,000 tons" means 50,000 tons by estimation, which might be more or less, but would be approximately that amount, and is for an amount practically

definite. Hunter W. Finch & Co. v. Zenith, etc., Co., 245 Ill. 592.

ESTIMATION.

As Act of Judgment.

"Estimation" is an act of the judgment, and not merely of perception. Herdman-Harrison, etc., Co. v. Spehr, 46 Ill. App. 32.

ESTOPPEL.

An impediment or bar to the assertion of a right of action arising by a man's own conduct, or where he is forbidden by law to speak against his own act. Mills v. Graves, 38 Ill. 464.

The preclusion of a person to deny the truth of a fact which has been admitted or determined under circumstances of solemnity, such as by matter of record or deed, or which he has, by an act in pais, induced another to believe and act upon to his prejudice. Richolson v. Moloney, 195 Ill. 580.

Is an admission of a nature so high and conclusive that the party whom it affects is not permitted to aver against it or offer evidence to controvert it. MacNeil's, Ill. Evidence 504.

Technical Estoppel.

The estoppel by record or deed is commonly known as technical estoppel. Dickson v. New York, etc., Co., 211 Ill. 495.

Basis of Doctrine.

Estoppels are said to be odious to the law, in that they prevent the assertion of the truth, and are only sanctioned to prevent the perpetration of fraud and injustice. Mills v. Graves, 38 Ill. 465; Potter v. Fitchburg, etc., Co., 110 Ill. App. 455. To the same effect see Keith v. Lynch, 19 Ill. App. 577. Yet the doctrine, when properly applied, is founded on the highest principles of morality, and recommends itself to the common sense and justice of every one. Covenant, etc., Ass'n v. Tuttle, 87 Ill. App. 329.

Estoppel Against Estoppel.

At common law the rule was that an estoppel against an estoppel opens up the

whole matter, and sets it at large, or in other words, one estoppel neutralizes the other, and leaves the question to be tried over. Chicago, etc., Seminary v. People, 189 Ill. 446.

Unaffected by Statute of Frauds.

The statute of frauds cannot be set up to defeat an estoppel. Cross v. Weare, etc., Co., 153 Ill. 516.

Effect.

Where there is an estoppel, a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part. Wright v. Stice, 173 Ill. 580.

The effect of an estoppel is to prevent the truth from being shown. Mullaney v. Duffy, 145 Ill. 565; Mills v. Graves, 38 Ill. 464; Potter v. Fitchburg, etc., Co., 110 Ill. App. 454; Keith v. Lynch, 19 Ill. App. 577.

Title to land may be conveyed by estoppel. Cross v. Weare, etc., Co., 153 Ill. 516.

The effect of the doctrine of estoppel, when applicable, is the forfeiture of a pre-existing right, or the exclusion of evidence of the right. Gillett v. Wiley, 126 Ill. 322.

Requires Good Faith in Party Seeking Estoppel.

Since the doctrine of estoppel concerns conscience and equity, the party seeking an estoppel must have himself acted in good faith toward the party on whose conduct he relied, or it will constitute no bar against the assertion of the truth. First, etc., Bank v. Ricker, 71 Ill. 446.

Will Not Operate to Produce Inequity.

The same principle which creates an estoppel in certain cases will in others destroy it, for as an estoppel is called into being to prevent fraud, it will be suppressed when fraud will be produced by its existence. Needles v. Hanifan, 11 Ill. App. 307.

By Deed-Elements.

An estoppel by deed arises where there is in the deed an express or implied representation that the grantor at the time of

the conveyance is possessed of the title which his deed purports to convey, and if there is such a representation, whether fraudulent, or the result of an honest belief, the grantor is estopped from denying that he has title. Guertin v. Mombleau, 144 Ill. 37.

- As Applied to Municipality.

A city is not estopped by the recitals in a deed in pursuance of a sale for non-payment of special assessments, so as to pass after acquired title to the grantee therein, although a deed wherein such city purported to convey its own title for a consideration would probably work such an estoppel. Roby v. Chicago, 64 Ill. 451.

By Record—Elements.

To constitute an estoppel by judgment, where the former adjudication is relied upon as an absolute bar, there must be, as between the two actions, identity of parties, of subject matter, and causes of action. Leopold v. Chicago, 150 Ill. 573; Wright v. Griffey, 147 Ill. 498.

It is not necessary, in order to constitute an estoppel by verdict, that either the same subject matter was involved in the former action or that the parties claimed in the same right or capacity. Brack v. Boyd, 211 Ill. 293.

Where a former adjudication is relied on as an answer and bar to the whole cause of action, or, in other words, where it is claimed to be an answer to all the questions involved in the subsequent action, such former adjudication will constitute what is known as an estoppel by judgment, provided that the cause of action and thing to be recovered are the same in both suits. Teel v. Dunnihoo, 230 III. 487; Hanna v. Read, 102 III. 602.

- Effect.

Where the doctrine of res judicata is applied to a single question or point arising in the litigation which has been finally adjudicated, it is termed an estoppel by verdict, and its effect is that the same question or point cannot again be litigated between the same parties in the same or any other court of law or in chancery, and neither party or his privies

can allege anything inconsistent with the finding. Chicago, etc., Co. v. National, etc., Co., 260 Ill. 493; Cherry v. Chicago, etc., Co., 190 Ill. App. 74. To the same effect see Dempster v. Lansingh, 244 Ill. 411; Teel v. Dunnihoo, 230 Ill. 487; Brack v. Boyd, 211 Ill. 293; Baldwin v. Hanecy, 204 Ill. 289; Potter v. Clapp, 203 III. 603; Chicago, etc., Seminary v. People, 189 Ill. 443; Markley v. People, 171 Ill. 263; Louisville, N. A. & C. Ry. Co. v. Carson, 169 Ill. 251; Leopold v. Chicago, 150 Ill. 573; Wright v. Griffey, 147 Ill. 498; Attorney General v. Chicago & E. R. Co., 112 Ill. 539; Hanna v. Read, 102 Ill. 602.

- As Branch of Res Judicata Doctrine.

An estoppel by verdict is a branch of the doctrine of res judicata, and rests on the same principle of law—that is, that a matter once litigated between parties to a final judgment in a court of competent jurisdiction cannot be again controverted. Chicago v. National, etc., Co., 260 Ill. 493; Cherry v. Chicago, etc., Co., 190 Ill. App. 74.

— When Doctrine Applicable.

The doctrine of estoppel by judgment is applicable, where there is no want of jurisdiction, whether the judgment relied on be erroneous or not. Jenkins v. International Bank, 111 Ill. 471.

- Limitation of Doctrine.

The doctrine of estoppel by verdict is limited to matters necessarily involved in the litigation, but it is equally applicable whether the point was, itself, the ultimate vital point, or only incidental, but still necessary to a decision of the case. Leopold v. Chicago, 150 Ill. 574; Wright v. Griffey, 147 Ill. 499.

— Available to Both Parties.

The species of estoppel known to the law as an estoppel by verdict is equally available to a plaintiff in support of his action, when circumstances warrant it, as when offered by a defendant as a matter of defense. Teel v. Dunnihoo, 230 Ill. 487; Potter v. Clapp, 203 Ill. 603; Hanna v. Read, 102 Ill. 603.

- Matters Precluded.

In all cases where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a different cause of action, the inquiry must be as to the points or questions actually litigated and determined in the original action, and not what might have been thus litigated or determined (Chicago, etc., Seminary v. People, 189 Ill. 443), and it must appear, on the face of the record, or by extrinsic evidence, that the precise question was raised and determined in the first suit. Chicago, etc., Seminary v. People, 189 Ill. 443; Young v. People, 171 Ill. 303; Spring Valley, etc., Co. v. Patting, 112 Ill. App. 7.

- Applicable to Jurisdictional Questions.

The doctrine of estoppel by verdict applies to questions arising upon an issue as to the jurisdiction of the court as fully and completely as to questions arising upon the trial of a cause upon the merits, and is not affected by the fact that the court may ultimately determine that it can go no further. Chicago, etc., Co. v. National, etc., Co., 260 Ill. 494; Cherry v. Chicago, etc., Co., 190 Ill. App. 74.

In Pais-Definition.

An indisputable admission, arising from the circumstances, that the party claiming the benefit of it has, while acting in good faith, been induced, by the voluntary, intelligent action of the party against whom it is alleged, to change his position. Washingtonian Home v. Chicago, 157 Ill. 429.

An equitable estoppel is said to be where one knowingly, though he does it passively, by looking on, suffers another to purchase land, under an erroneous opinion of title, without making known his claim, he shall not afterwards be permitted to exercise his legal right against such person, since it would be an act of injustice, and his conscience is bound by this equitable estoppel. Cochran v. Harrow, 22 Ill. 349.

A man is said to be estopped where he has done some act which the policy of the law will not permit him to gainsay or deny. People v. Ogden, 10 Ill. App. 229.

Estoppel in pais is equitable estoppel arising from act and conduct. Dickson v. New York, etc., Co., 211 Ill. 495. To the same effect see Covenant, etc., Ass'n v. Kentner, 188 Ill. 442; Wright v. Stice, 173 Ill. 579; Gillespie v. Gillespie, 159 Ill. 89; Robbins v. Moore, 129 Ill. 54; Powell v. Rogers, 105 Ill. 322; Chandler v. White, 84 Ill. 438; Flower v. Elwood, 66 Ill. 447; Smith v. Newton, 38 Ill. 236; Davidson v. Young, 38 Ill. 152; Kohlsaat v. Gay, 126 Ill. App. 9; Covenant, etc., Ass'n v. Tuttle, 87 Ill. App. 329; Campbell v. Goodall, 54 Ill. App. 26.

Wherever an act done or a statement made by a party which cannot be contradicted without fraud on his party or injury to others whose conduct has been influenced by the act or admission, the character of an estoppel will attach to what would otherwise be mere matter of evidence. Union, etc., Co. v. Slee, 123 Ill. 86; International Bank v. Bowen, 80 Ill. 545; Smith v. Newton, 38 Ill. 235.

An estoppel in pais is not quite properly called an estoppel. Keith v. Lynch, 19 Ill. App. 577.

- Basis of Doctrine.

Estoppels in pais are founded on intention, and cannot be extended to objects and purposes which the parties cannot reasonably be supposed to have had in view. Campbell v. Goodall, 54 Ill. App. 27; Needles v. Hanifan, 11 Ill. App. 307.

The doctrine of estoppel in pais is based upon a fraudulent purpose and a fraudulent results. Galpin v. Chicago, 269 Ill. 42; Finch v. Theiss, 267 Ill. 73; Vail v. Northwestern, etc. Co., 192 Ill. 570; Gillespie v. Gillespie, 159 Ill. 89; Holcomb v. Boynton, 151 Ill. 300 (aff'g 49 Ill. App. 508); Covenant, etc., Ass'n v. Tuttle, 87 Ill. App. 329; Robbins v. Moore, 129 Ill. 54; Northwestern, etc., Co. v. Amerman, 119 Ill. 336; Chandler v. White, 84 Ill. 438; Dorlarque v. Cress, 71 Ill. 382; Flower v. Elwood, 66 Ill. 447; Davidson v. Young, 38 Ill. 152; Bruner v. Campbell, 90 Ill. App. 636; Campbell v. Goodall, 54 Ill. App. 26.

The doctrine of estoppel proceeds on the theory that a party is forbidden to set up his legal title where he has so conducted himself in regard to the property that to do so would be contrary to equity and good conscience. Joos v. Illinois, etc., Guard, 257 Ill. 146. To the same effect see Dickson v. New York, etc., Co., 211 Ill. 494; Penn. v. Heisey, 19 Ill. 298.

Equitable estoppels are favored in law, honor and conscience for the reason that a man who has received a benefit in one character, the value of the thing, or of the property, shall not afterwards receive the thing or the property itself, in the same or another character. Dickson v. New York, etc., Co., 211 Ill. 494; Penn v. Heisey, 19 Ill. 298.

The foundation of the doctrine of equitable estoppel is the necessity of preventing the consummation of the fraud which would result if a person who, by his words or conduct, has induced another so to act as to change his previous position, should afterwards be permitted to deny the existence of the state of things upon the faith of which the other party has acted. Sheller v. McKenney, 17 Ill. App. 191.

The doctrine of equitable estoppel is based on the ground of promoting the justice and equity of the individual case, by preventing the party from asserting his rights under a general technical rule of law, when he has so conducted himself that it would be contrary to equity and good conscience for him to allege and prove the truth. Campbell v. Goodall, 54 Ill. App. 26. See Covenant, etc., Ass'n v. Kentner, 188 Ill. 442, where it is held that such estoppels are based on the principles of equity and justice.

The primary ground of the doctrine of estoppel in pais is that it would be a fraud in a party to assert what his previous conduct had denied, when, on the faith of the denial, others have acted. Kinnear v. Mackey, 85 Ill. 99. To the same effect see Carpenter v. Falter, 4 Ill. App. 51.

The doctrine of estoppel in pais is to prevent injuries arising from acts or declarations which have been acted on in good faith, but which it would be inequitable to permit the party to retract. Ball v. Hooten, 85 Ill. 161; Hefner v. Vandolah, 57 Ill. 524; Knoebel v. Kircher, 33

Ill. 315; Mateer v. Green, 31 Ill. App. 471; Humiston v. Trustees, 7 Ill. App. 126.

The doctrine of estoppel in pais rests upon the act of the party to be estopped, or some omission on his part to speak or act, by which some supposed right of the party seems to be waived, in a case and under circumstances where some other party acts on the faith of such act or omission, and changes his condition, the estoppel resting, in all cases, upon the position that the party to be estopped ought to have acted differently, if he did not intend to waive his right, and the circumstances being such that good faith required him to act otherwise, if he was not willing that the other party should act on the faith of the supposed waiver. Noble v. Chrisman, 88 Ill. 199.

The doctrine of estoppel in pais is applicable only where it is inequitable to allow the assertion of a right, or proof of a fact to prevail, and the doctrine is never applied to one without fault, or who has not, by some act or declaration, or by silence when he should speak, induced another to alter his condition on the faith of the acts or the truth of the declarations. Gillett v. Wiley, 126 Ill. 322.

- Scope of Doctrine.

A much broader scope has been given to the doctrine of estoppel in pais, both in England and in this country, than formerly obtained. International Bank v. Bowen, 80 Ill. 545; Smith v. Newton, 38 Ill. 235.

The principle of equitable estoppel applies to infants as well as adults, to insolvent sureties and guardians, as well as persons acting for themselves. Dickson v. New York, etc., Co., 211 Ill. 494.

The doctrine of estoppel in pais can only be set up as a means of preventing injustice (Leeper v. Hersman, 58 Ill. 221; Thomas v. Bowman, 29 Ill. 429; Humiston v. Trustees, 7 Ill. App. 127), as a shield, and not as a sword (Thomas v. Bowman, supra; Humiston v. Trustees, supra), and cannot be extended by construction. Leeper v. Hersman, supra.

— Elements.

The essential elements of an estoppel in pais are, misrepresentation or concealment of material facts, ignorance of the truth of the matter by the party to whom the representations were made, and reliance upon his part in acting on the rep-Finch v. Theiss, 267 Ill. resentations. 73; Holcomb v. Boynton, 151 Ill. 300 (aff'g 49 Ill. App. 509); Kohlsaat v. Gay, 126 Ill. App. 9; Bruner v. Campbell, 90 Ill. App. 636. To the same effect see Salem Bank v. White, 159 Ill. 142; Knapp v. Jones, 143 Ill. 382; St. Louis, A. & T. H. R. Co. v. Belleville, 122 Ill. 383; Golconda v. Field, 108 Ill. 426; Hefner v. Vandolah, 57 Ill. 523; Smith v. Newton, 38 Ill. 236; Keith v. Lynch, 19 Ill. App. 577.

To constitute an estoppel by words or conduct, the following elements must, generally speaking, be present: (1) there must have been a representation concerning material facts; (2) the representation must have been made with a knowledge of the facts; (3) the party to whom it is made must have been ignorant of the truth of the matters; (4) it must have been made with the intention that it should be acted upon; (5) it must have been acted upon. Siegel v. Colby, 176 Ill. 214; People v. Brown, 67 Ill. 437; Independent, etc., Co. v. Hilbig, 163 Ill. App. 20; Dinet v. Eilert, 13 Ill. App. 100.

— Deception.

To constitute an estoppel, there must be deception, and change of conduct in consequence. Finch v. Theiss, 267 Ill. 73; Gillespie v. Gillespie, 159 Ill. 89; Knapp v. Jones, 143 Ill. 383; Robbins v. Moore, 129 Ill. 54; Northwestern, etc., Co. v. Amerman, 119 Ill. 336; Powell v. Rogers, 105 Ill. 322; Dorlarque v. Cress, 71 Ill. 382; Flower v. Elwood, 66 Ill. 447; Davidson v. Young, 38 Ill. 152; Kohlsaat v. Gay, 126 Ill. App. 9; Potter v. Fitchburg, etc., Co., 110 Ill. App. 455.

Before the doctrine of estoppel in pais can be applied, it must appear that the person against whom it is invoked has by his words or conduct voluntarily caused the person claiming the estoppel to believe in the existence of a certain

state of things, and induced him to act on that belief. Galpin v. Chicago, 269 Ill. 42; Finch v. Theiss, 267 Ill. 73; Vail v. Northwestern, etc., Co., 192 Ill. 570; Chicago v. Sawyer, 166 Ill. 297; Salem, etc., Bank v. White, 159 Ill. 142; Robinson Bank v. Miller, 153 Ill. 260; Holcomb v. Boynton, 151 Ill. 300 (aff'g 49 Ill. App. 508); Casler v. Byers, 129 Ill. 667; Gillett v. Wiley, 126 Ill. 322; Hill v. Blackwelder, 113 Ill. 291; People v. Brown, 67 Ill. 437; Hefner v. Vandolah, 57 Ill. 524; Chapin v. Miles, 151 Ill. App. 168; Vail v. Northwestern, etc., Co., 92 Ill. App. 659; Bruner v. Campbell, 90 Ill. App. 636; Covenant, etc., Ass'n v. Tuttle, 87 Ill. App. 329; Mackey v. Plumb, 29 Ill. App. 248; Sheller v. Mc-Kenney, 17 Ill. App. 191; Bliss v. Geer, 7 Ill. App. 618; Talcott v. Brackett, 5 Ill. App. 69.

— Party Claiming Must Be Ignorant of Truth.

It is essential to the application of the principle of equitable estoppel that the party claiming to have been influenced by the conduct or declarations of another to his injury was himself not only without knowledge of the facts but destitute of any convenient and available means of acquiring such knowledge. Gallagher v. Northrup, 215 Ill. 569.

Where the foundation of the estoppel claimed is silence, and the omission to give notice of rights, it is usually essential that the party relying on the silence as an estoppel should not have the means of ascertaining the facts, as from a public record. Robbins v. Moore, 129 Ill. 55; Thor v. Oleson, 125 Ill. 369.

A party claiming the benefit of an estoppel cannot shut his eyes to obvious facts or neglect to seek information which is easily accessible, and then charge his ignorance to others. Gallagher v. Northrup, 215 Ill. 569; Vail v. Northwestern, etc., Co., 192 Ill. 570.

- Must Be Reciprocal.

An estoppel in pais, to be binding, must be reciprocal and bind both parties (Siegel v. Colby, 176 Ill. 214; Mills v. Graves, 38 Ill. 464) and mutuality is essential. Campbell v. Goodall, 54 Ill. App. 26.

Nature of Representation.

The conduct and representations relied on as constituting an estoppel in pais must be such as would ordinarily lead to the result complained of (Hefner v. Vandolah, 57 Ill. 524; Humiston v. Trustees, 7 Ill. App. 126), and the injurious effect of which might and ought to have been foreseen. Knoebel v. Kircher, 33 Ill. 315; Vail v. Northwestern, etc., Co., 92 Ill. App. 660.

To have the effect of an estoppel, an admission must be made with the knowledge of the facts or for the purpose of fraud. Joos v. Illinois, etc., Guard, 257 Ill. 146.

An estoppel in pais must be certain, to every intent, and must not be taken by argument or inference, and muct be a precise affirmation of what creates the estoppel, and not by way of recital. Mills v. Graves, 38 Ill. 465; Potter v. Fitchburg, etc., Co., 110 Ill. App. 454.

To constitute an estoppel by representation, the representation must be plain and certain, and must ordinarily have reference to past or present facts and not to matters of law or opinion. Wright v. Stice, 173 Ill. 580.

The representation which will constitute an estoppel in pais is one which is external to, and not necessarily implied in, the transaction itself. People v. Brown, 67 Ill. 437.

Representations, either by words or conduct, inducing another to proceed in a certain way, do not constitute an estoppel in pais unless the party making them has full knowledge of the facts, or has been guilty of negligence in failing to learn them. Joos v. Illinois, etc., Guard, 257 Ill. 146; Wright v. Stice, 173 Ill. 580; Quick v. Nitschelm, 139 Ill. 262. To the same effect see Reiss v. Hanchett, 141 Ill. 424; Mayer v. Erhardt, 88 Ill. 457; Jeffery v. Babcock, 98 Ill. App. 26.

— Fraud.

Fraud, or something tantamount thereto, is a distinctive characteristic of the kind of estoppel known as estoppel in pais. Covenant, etc., Ass'n v. Kentner, 188 Ill. 442; Salem, etc., Bank v. White, 159 Ill. 142; Gillespie v. Gillespie, 159

Ill. 89; Knapp v. Jones, 143 Ill. 383; Robbins v. Moore, 129 Ill. 54; Wilson v. Roots, 119 Ill. 397; Northwestern, etc., Co. v. Amerman, 119 Ill. 336; Powell v. Rogers, 105 Ill. 322; Chandler v. White. 84 Ill. 438; Dorlarque v. Cress, 71 Ill. 382; Flower v. Elwood, 66 Ill. 447; Davidson v. Young, 38 Ill. 152; Kohlsaat v. Gay, 126 Ill. App. 9; Campbell v. Goodall, 54 Ill. App. 26. But it is not necessary that there should be an actual fraudulent intention at the time of making the declarations or of the conduct relied on. Gillett v. Wiley, 126 Ill. 323; Hill v. Blackwelder, 113 Ill. 292; Brayton v. Harding, 56 Ill. App. 364. It may consist either in the intention of the party estopped, or in the evidence which he attempts to set up. Covenant, etc., Ass'n v. Kentner, 188 Ill. 442; Kinnear v. Mackey, 85 Ill. 99. And it will be sufficient, even in the absence of a fraudulent intention, that the acts or words relied on will produce a fraudulent result. Robbins v. Moore, 129 Ill. 54; Hill v. Blackwelder, 113 Ill. 292; Chandler v. White, 84 Ill. 438; Brayton v. Harding, 56 Ill. App. 364.

- Effect of Silence.

Where an estoppel is claimed by reason of silence, it must be silence where there is a duty to speak. Vail v. Northwestern, etc., Co., 192 Ill. 570.

In order to constitute an estoppel by the silence of a party who in equity and good conscience should have spoken, it is essential that the party clalmed to be estopped should have knowledge of the facts and the other party be ignorant thereof, and have been misled into doing that which he would not have done but for such silence. Finch v. Theiss, 267 Ill. 73; Mullaney v. Duffy, 145 Ill. 565.

The doctrine of estoppel in pais applies, to prevent injustice, to a case where persons not parties to a legal process stand by and allow their property to be levied on as the property of another and make no disclosure of ownership, where such silence induces the act of which complaint is made. Reiss v. Hanchett, 141 Ill. 428. To the same effect see Colwell v. Brower, 75 Ill. 523; Leeper v.

Hersman, 58 Ill. 220 (where the owner's silence as to his rights prevented search for other property of defendant); Mills v. Graves, 38 Ill. 465.

Where the owner of land stands by and suffers credit to be given to another on the supposition that such other is the owner of the land, and actively aids in creating the belief that such other person does own the same, the actual owner will be estopped to assert his own title against the person deceived. Robbins v. Moore, 129 Ill. 55. To a similar effect see Hill v. Blackwelder, 113 Ill. 293.

Where adjoining landowners made a party wall agreement providing for a solid wall throughout its entire length, the silence of one while the other was constructing windows in the wall, and her failure at the time to object thereto, does not constitute an estoppel which prevents her from later closing the windows. Finch v. Theiss, 267 Ill. 73.

- Change of Position.

The doctrine of estoppel in pais can be invoked only by one who has relied on the statements or declarations made to him, and relying on them, has changed his position with reference to the subject matter of such statements or declarations. Supreme Tent v. Stensland, 206 Ill. 130; Walls v. Ritter, 180 Ill. 620; Potter v. Fitchburg, etc., Co., 110 Ill. App. 455. To the same effect see Powers v. Wells, 244 Ill. 570; Washingtonian Home v. Chicago, 157 Ill. 429; Hefner v. Vandolah, 57 Ill. 524; Mills v. Graves, 38 Ill. 465; Potter v. Fitchburg, etc., Co., 110 Ill. App. 454; Mateer v. Green, 31 Ill. App. 471; Humiston v. Trustees, 7 Ill. App. 126.

The doctrine of estoppel in pais applies to a change of position by the person claiming the estoppel, and not to a mere change of a previous condition of mind. Sheller v. McKenney, 17 Ill. App. 192.

- Prejudice.

It is an essential element of an estoppel in pais that the action taken by the party on the faith of the words or conduct relied on as constituting the estoppel shall be of a nature calculated to result in substantial prejudice unless he is permitted to rely on the estoppel. Gallagher v. Northrup, 215 Ill. 569; Supreme Tent v. Stensland, 206 Ill. 130; Washingtonian Home v. Chicago, 157 Ill. 429; Ball v. Hooten, 85 Ill. 161; Chandler v. White, 84 Ill. 439.

- Effect.

The effect of an estoppel in pais is to conclude a party from gainsaying acts and admissions which have influenced the conduct of another, so that it would be a fraud to assert that such previous acts and admissions have denied. Covenant, etc., Ass'n v. Kentner, 188 Ill. 442.

- Inapplicable to Government.

The doctrine of estoppel in pais does not apply to the government, so as to prevent it from recovering its own by reason of any statement of government officials. People v. Brown, 67 Ill. 438.

- What Constitutes.

A lease of part of a farm for the purpose of a rifle range for the state militia does not constitute an estoppel to object to its use therefor where it appears that at the time of making the lease the lessor and the militia officers supposed that the remainder of the farm would not be reached by bullets fired at the targets on the range, but where there is evidence that notwithstanding this belief, bullets from the range passed over an intervening crest and created danger on the land not leased. Joos v. Illinois, etc., Guard, 257 Ill. 147.

- What Does Not Constitute.

There can be no estoppel where both parties are equally in possession of all the facts pertaining to the matter relied on as an estoppel, or where with such knowledge each acts on his own judgment. Siegel v. Colby, 176 Ill. 214; Robbins v. Moore, 129 Ill. 54; Northwestern, etc., Co. v. Amerman, 119 Ill. 336; Powell v. Rogers, 105 Ill. 322; Dorlarque v. Cress, 71 Ill. 382; Davidson v. Young, 38 Ill. 152; Kohlsaat v. Gay, 126 Ill. App. 9. To the same effect see Knapp v. Jones, 143 Ill. 382.

There can be no estoppel by representations where the avenues of information are equally open to both parties. Siegel v. Colby, 176 Ill. 214; Mills v. Graves, 38 Ill. 465. To the same effect see Mullaney v. Duffy, 145 Ill. 565 (applying the same rule to a case where an estoppel was claimed from a failure to assert legal rights).

The doctrine of estoppel does not apply to a case where one without fraud, but under a misapprehension of law, treats a void act as valid and acts accordingly, since if both parties are cognizant of the facts, and one mistakes the law, the other cannot say that he has been deceived, but will be considered as acting on his own judgment. Galpin v. Chicago, 269 Ill. 42; Finch v. Theiss, 267 Ill. 73; Holcomb v. Boynton, 151 Ill. 300 (aff'g 49 Ill. App. 508).

Mere loose expressions, inadvertently made, in ignorance of the party's rights, of ambiguous declarations, do not constitute an estoppel in pais. Mills v. Graves, 38 Ill. 465.

Statements in one transaction will not constitute an estoppel in pais in another which it was not designed to influence. Needles v. Hanifan, 11 Ill. App. 307.

— Against Acceptor of Bill of Exchange.

The rule that the acceptor of a bill of exchange is estopped to deny the genuineness of the drawer's signature proceeds not so much on the ground of an estoppel in pais as upon an estoppel arising out of a presumption in pursuance of a legal obligation, the acceptor being presumed, on grounds of public policy, to know the drawer's signature, but such estoppel is of vastly less significance than one created by the deliberate acts of the party which it would be inequitable for him to retract. First, etc., Bank v.

— As Applied to Stockholders.

Ricker, 71 Ill. 446.

A stockholder who has assisted in organizing a corporation is estopped to deny the validity of such organization in a suit by a creditor aimed to enforce the personal liability of the stockholder for the debts of the corporation. McCarthy v. Lavasche, 89 Ill. 275.

— As Applied to Insurance Company.

An estoppel in pais arises when the insurer, having knowledge of the facts to which he has a right to take exceptions, or which constitute a defense against any claim under the policy, if he chooses to avail himself of them, so bears himself in relation to the contract as to fairly lead the insured to believe that the insurer still recognizes the policy to be in fully force. Northwestern, etc., Co. v. Amerman, 119 Ill. 336.

The mere fact that a premium on a policy has been collected after the insurer has knowledge of an existing right of forfeiture does not constitute an estoppel against setting up such forfeiture where the assured had no reason fairly to conclude from the acts or declarations of the company or its agents, that the forfeiture had been or would be waived, or unless the payment was made in reliance on the validity of the policy, induced by the acts, declarations or silence of the company. Northwestern, etc., Co. v. Amerman, 119 Ill. 337.

An estoppel in pais arises to prevent aninsurance company from asserting in defense in an action on the policy facts occurring before the delivery of the policy, and known to the company, which make the policy invalid according to its terms, where the company issues the policy and accepts the premium, these acts constituting a representation that the policy was valid. Commercial, etc., Co. v. Ives, 56 Ill. 407.

- Applied to Municipality.

The doctrine of estoppel in pais is applicable, in proper cases, to municipal corporations. Chicago v. Sawyer, 166 Ill. 297; Martel v. East St. Louis, 94 Ill. 69; Chicago & N. W. Ry. Co. v. People, 91 Ill. 255; Logan v. Lincoln, 81 Ill. 159; Chicago, R. I. & P. R. Co. v. Jollet, 79 Ill. 39; Roby v. Chicago, 64 Ill. 451.

The doctrine of estoppel in pais is or is not applied to a municipal corporation, in respect to public rights and interests, as justice and right may require, and such an estoppel can only be set up as a means of preventing injustice where there has been a change of conduct induced by the act of a municipal corporation, and as a means of preventing a fraudulent result. Chicago v. Sawyer, 166 Ill. 297; Martel v. East St. Louis, 94 Ill. 69; Chicago & N. W. Ry. Co. v. People, 91 Ill. 255; Chicago, R. I. & P. R. Co. v. Joliet, 79 Ill. 39

The mere non action of city officials is not sufficient to work an estoppel in pais against a municipal corporation. Logan County v. Lincoln, 81 Ill. 159.

Before the doctrine of estoppel in pais can be invoked against a municipal corporation there must have been positive acts by the municipal officers which may have induced the action of the adverse party, and where it would be inequitable to permit the corporation to stultify itself by retracting what its officers had done. Washingtonian Home v. Chicago, 157 Ill. 429; Martel v. East St. Louis, 94 Ill. 70; Logan County v. Lincoln, 81 Ill. 159.

The acceptance by the proper official of a city of the fee for a dram shop license, and the issuance by the proper officer of such a license, will, while the license remains unrevoked, and the money unreturned, operate as an estoppel to prevent such city from prosecuting such licensee for keeping a dram shop without a license. Martel v. East St. Louis, 94 Ill. 69.

In order to make the doctrine of estoppel in pais applicable to a municipal corporation, it must appear that the person whose representations or acts are relied on as raising the estoppel had authority to act for the municipality in respect to the matter in question. St. Louis, A. & T. H. R. Co. v. Belleville, 122 Ill. 383.

- As Applied to Land.

The doctrine of estoppel in pais, as affecting permanent interests in land, can only be made available in a court of equity. Quick v. Nitschelm, 139 Ill. 262; Mills v. Graves, 38 Ill. 464.

— When Applicable to Attorneys Claiming Lien.

Where attorneys who have secured a money decree for clients appear for such clients in a proceeding resulting in the appointment of a receiver, and in the assignment of the claim to such receiver, without disclosing that they claimed an interest in the amount decreed, the facts will constitute an estoppel which will prevent the attorneys from claiming as against the receiver. Nichols v. Pool, 89 Ill. 494.

- When Applicable to Factorage.

The fact that owners of goods consign them to factors to be sold on commission does not operate as an estoppel to prevent the owners from claiming the goods from those who have advanced money on a pledge of the goods by the factors, the lenders supposing them to be the property of the factors, unless the owners have informed the lenders that the factors were the owners, or informed others from whom the lender learned the fact. Gray v. Agnew, 95 Ill. 321.

- Measure of Proof.

The facts on which an estoppel in pais is claimed must be established by clear and convincing evidence. Potter v. Fitchburg, etc., Co., 110 Ill. App. 454; Keith v. Lynch, 19 Ill. App. 577. The party claiming the estoppel must show a wilful intent to make him act on the faith of the representation, and that he did so act. Keith v. Lynch, 19 Ill. App. 577.

ESTRAY.

A wandering beast which no one seeks, follows or claims. A beast which, having escaped from its keeper, wanders over the fields, its owner being unknown. Roberts v. Barnes, 27 Wis. 425.

Any valuable animal, not wild, found within a township and whose owner is not known. Walton v. Gray, 29 Iowa 440.

An animal that has escaped from its owner and wanders or strays about. Shepherd v. Hawley, 4 Oregon 208.

ET AL.

Indicates that there are still other parties who are not named. Lyman v. Milton, 44 Cal. 633.

ET CETERA, & OR ETC.

"The letters 'etc.' are an abbreviation of et cetera." State v. Arnold, 140 Ind. 630.

Etc. stands for "and so forth." Hunt v. Smith, 9 Kan. 153.

The term is simply an abbreviation of the words "et cetera," which mean "other things." Gray v. Central R. R. of N. J., 11 Hun (N. Y.) 75.

A common expression denoting others of the like kind. Agate v. Lowenbein, 4 Daly Com. Pl. (N. Y.) 68.

The phrase et cetera imports other purposes of a like character to those which have been named. High Court v. Schweitzer, 70 Ill. App. 143.

A bequest of "all my household furniture and effects, plate, glass, wearing apparel, &c.," was held to pass the articles enumerated, and others ejusdem generis, but not the general residue (Newman v. Newman, 26 Bea. 220); and a like construction was given to the words "all my furniture, &c." (Barnaby v. Tassell, L. R. 11 Eq. 363). But though those cases were cited to Jessel, M. R., in Chapman v. Chapman (46 L. J. Ch. 104; 4 Ch. D. 800), he held that the general residue passed under a bequest, to the testator's widow, of "all my money, cattle, farming implements, &c., she paying my brother the sum of £ Gover v. Davis, 30 L. J. Ch. 505; 29 Bea. 225: Dean v. Gibson, 36 L. J. Ch. 657; L. R. 3 Eq. 713: Twining v. Powell, 2 Coll. 262; 1 Jarm. 755, n.: Mullally v. Walsh, 3 L. R. Ir. 244.

The insertion of "&c." in some of the terms of an Agreement for a Lease, does not produce such uncertainty as to render the Agreement incapable of specific performance, if the material points are sufficiently stated (Parker v. Taswell, 27 L. J. Ch. 812; 2 D. G. & J. 559). On the sale of "Goodwill, &c.," the "&c." carries the belongings of the Goodwill, e.g., trade-marks. Cooper v. Hood, 28 L. J. Ch. 215.

A paper pledging "iron, junk, hides, etc." does not include a set of scales used in weighing the articles conveyed or a quantity of rock salt, the abbreviation

"etc." being construed to refer to property of the same general character as iron, junk and hides. Morgenstein v. Commercial, etc., Bank, 125 Ill. App. 399.

The words "et cetera," meaning "and others," or "and other things," are frequently construed by the courts to import other purposes of like character with those already named. Doty v. American Telephone & Telegraph Co., 123 Tenn. 329.

ETHEL.

The name "Ethel," used in an information for pandering as part of the name of defendant, imports a person of the female sex. People v. Pizzi, 170 Ill. App. 538.

EVENT.

The expression abide the event as applied to costs means, usually the final result of the suit (Reeves v. McGregor, 9 A. & E. 577; Green v. Wright, 46 L. J. C. P. 427; Meule v. Goddard, 5 B. & Ald. 766; First Nat. Bank v. Fourth Nat. Bank, 84 N. Y. 469.

This applies where a new trial is granted and throws the burden of subsequent costs on him who is defeated in the subsequent proceedings. United States v. Beaty, Hempst. 496; Robbins v. Hudson, etc., R. Co., 7 Bows. 1; Den. v. Johnson, 18 N. J. Law 101; Walker v. Barron, 6 Minn. 508.

"What was meant by the words 'abide the event?' Not that the same order of proceedings should be taken, step by step, in the succeeding cases as in the first. The parties had in view no such parrotlike repetition of forms without meaning, if the end was predestined. They meant the final outcome and the end of the litigation that the side finally successful in the first case should be successful in all." Commercial, etc., Assur. Co. v. Scammon, 35 Ill. App. 659.

—"in an order of reference [to an arbitrator, in which it is ordered that the costs of the cause, and the costs of the reference and award shall abide the event] the word 'event' must be read distrib-

utively, and * * it does not mean the single event of the arbitration, which all the costs are to follow, without any distribution of them in favour of the person who has succeeded on some of the issues, but * * * the word 'event' in such an order as this means 'events,' * * when the arbitrator has ascertained various issues, some in favour of the plaintiff and some in favour of the defendant, the party who succeeds upon the whole is entitled to general costs, but the unsuccessful party is entitled to the costs of the issues upon which he has succeeded." Lord Coleridge, C. J. in Lund v. Campbell, 14 Q. B. D. 826, citing Ellis v. Desilva, 6 Q. B. D. 521; Stooke v. Taylor, 5 Q. B. D. 569.

The case of Ellis v. Desilva (6 Q. B. D. 521) also cited to the same effect and followed in Hawke v. Brear, 14 Q. B. D. 841.

EVERY.

The word "every," used in section 13 of the Corporations Act (J. & A. ¶ 2430), relating to keeping books of account at the principal office of stock corporations, means each one and all. Venner v. Chicago C. Ry. Co., 246 Ill. 179.

Every was formerly spelt "everich," that is, ever each, and the true meaning is "each one of all." Brown v. Jarvis, 2 De G. F. & J. 172.

In Brown v. Jarvis (29 L. J. Ch. 595; 2 D. G. F. & J. 168) a gift over "after the decease of every of them," i.e., certain prior legatees, "every" was read "each." In that case Campbell, L. C., said, "Dr. Johnson tells us in his dictionary that 'every' was formerly spelt 'Everich,' that is, Ever-each; and that the true meaning is, 'each one of all.' The word may be used in this sense, although other lexicographers may give another meaning to it."

"Every Person," having served in the Militia, should have freedom to set up a trade (26 G. 3, c. 107), related only to persons exercising trades, and not to common labourers (R. v. Gwenop, 3 T. R. 135). So "every person" who impounds an animal is to feed it, s. 5, 12 &

13 V. c. 92, does not include the pound-keeper (Dargan v. Davies, 46 L. J. M. C. 122; 2 Q. B. D. 118); nor is an Inn-keeper, whilst in his own inn after the same is closed, within the phrase "every person found drunk on licensed premises," s. 12, 35 & 36 V. c. 94 (Lester v. Torrens, 46 L. J. M. C. 280; 2 Q. B. D. 403). But "every person" committed "for any offence or misdemeanour" to bear his own charges of being conveyed (3 Jac. 1, c. 10), includes deserters as well as ordinary criminals. R. v. Pierce, 3 M. & S. 62.

EVERY CORPORATION.

The expression "every corporation," used in section 1 of the act of 1901 (J. & A. ¶ 2667), relating to the filing of reports by domestic corporations, is broad enough to include corporations not for pecuniary profit. People v. Rose, 207 Ill. 357.

EVERY STOCK CORPORATION.

The expression "every stock corporation," used in section 13 of the Corporations Act (J. & A. ¶ 2430), relating to keeping books of account at the principal office of such corporations, includes the Chicago City Railways Company. Venner v. Chicago C. Ry. Co., 246 Ill. 179.

EVERYTHING.

"Under a bequest of 'everything' in a house, money and bank notes will pass." Watson, Eq. 1327, citing Popham v. Aylesbury, Amb. 68: Stuart v. Bute, 11 Ves. 662: and as to the latter case V. Watson, Eq. 1328.

EVERYTHING ELSE.

Held to include undisposed of realty in fee. Wilce v. Wilce, 9 L. J. O. S. C. P. 197; 5 Moo. & P. 682; 7 Bing. 664.

EVICT.

To deprive of the possession of the land. Keating v. Springer, 146 Ill. 495.

EVICTION.

The taking from a tenant some part of the demised premises of which he was in possession. Patterson v. Graham, 40 Ill. App. 402.

Classification.

There are two kinds of eviction, actual and constructive. Leiferman v. Osten, 167 Ill. 98.

Scope of Term.

The term "eviction" is applied to every class of expulsion or amotion. Barrett v. Boddie, 158 Ill. 483; Walker v. Tucker, 70 Ill. 541; Lynch v. Baldwin, 69 Ill. 212; Hayner v. Smith, 63 Ill. 435; Griesheimer v. Botham, 105 Ill. App. 587.

Former Meaning.

The "eviction" was formerly used to denote an expulsion by the operation of title paramount, and by process of law. Walker v. Tucker, 70 Ill. 541; Hayner v. Smith, 63 Ill. 435; Griesheimer v. Bothman, 105 Ill. App. 587.

Requisites.

There can be no eviction so long as the tenant retains possession of the demised premises. Humiston v. Wheeler, 175 Ill. 516; Kistler v. Wilson, 77 Ill. App. 153; Patterson v. Graham, 40 Ill. App. 402.

In order to constitute an eviction, it is not necessary that there should be an actual physical expulsion. Keating v. Springer, 146 Ill. 495; Montanye v. Wallahan, 84 Ill. 358; Walker v. Tucker, 70 Ill. 541; Hayner v. Smith, 63 Ill. 435; Smith v. Wise, 58 Ill. 143.

Actual.

An actual eviction is the actual expulsion of the tenant out of all or some part of the demised premises; a physical ouster or dispossession from the very thing granted, or some substantial part thereof. Patterson v. Graham, 40 Ill. App. 402.

Constructive.

A constructive eviction may be had by some act done with the intention and

which has the effect of essentially interfering with the tenant's beneficial enjoyment of the premises, or some part thereto, such as building a fence in front of the premises so as to cut off the tenant's access thereto, or creating a nuisance adjacent to the premises, provided that such acts are such as to warrant, and are followed by the tenant's giving up the possession. Patterson v. Graham, 40 Ill. App. 402. To the same effect see Lynch v. Baldwin, 69 Ill. 212; Hayner v. Smith, 63 Ill. 436.

"To evict a tenant, according to the original signification of the word, is to deprive him of the possession of the land. But the landlord, without being guilty of an actual physical disturbance of the tenant's possession, may yet do such acts as will justify or warrant the tenant in leaving the premises." If the tenant "abandons the premises in consequence * * then the circumof such acts stances which justify such abandonment, taken in connection with the act of abandonment itself, will support a plea of eviction as against an action for rent." But "there cannot be a constructive eviction without a surrender of posses-Heating v. Springer, 146 Ill. sion." 495, citing Hayner v. Smith, 63 Ill. 430, Edgeton v. Page, 20 N. Y. 284; Boriel v. Lawton, 90 N. Y. 293; De Witt v. Pierson, 112 Mass. 8; Warren v Wagner, 75 Ala. 188; Wright v. Lattin, 38 Ill. 293; 1 Taylor Landl. & Ten. — 8 ed. —, §§ 380, 381, and notes; 2 Wood, Land & Ten. - 2 ed. -, § 477, 1104-1106; Alger v. Kennedy, 49 Vt. 109; Scott v. Simons, 54 N. H. 426; Jackson v. Eddy, 12 Mo. 209.

Nature.

Eviction being necessarily the result of an intended, wilful, wrongful act, it must consist in a wilful omission of duty, or the commission of a wrongful act. Barrett v. Boddie, 158 Ill. 485.

What Constitutes.

The question whether the acts of a landlord amount to an eviction of the tenant is a question of fact to be determined by the jury. Rubens v. Hill, 213 Ill. 543; Barrett v. Boddie, 158 Ill. 483;

Patterson v. Graham, 140 Ill. 536; Lynch v. Baldwin, 69 Ill. 212; Hayner v. Smith, 63 Ill. 435; Magerstadt v. White, etc., Co., 176 Ill. App. 271; Smith v. Mitchell, 168 Ill. App. 37; Kastler v. Logg, 160 Ill. App. 412; McCormick v. Potter-Herrick, etc., Co., 147 Ill. App. 491; Dennick v. Ekdahl, 102 Ill. App. 201.

The question whether certain acts of a landlord amount to an eviction is a mixed question of law and fact. Dennick v. Ekdahl, 102 Ill. App. 202.

"Any act of a permanent character done by the landlord, or by his procurement, with the intention and effect of depriving the tenant of the enjoyment of the premises demised, or a part thereof, to which he yields, and abandons possession, may be treated as an eviction." Grove v. Youell, 110 Mich. 291, quoting Royce v. Guggenheim, 106 Mass. 201.

- Acts Justifying Abandonment.

Acts of a landlord justifying or warranting the tenant in leaving the premises, coupled with the act of abandonment, will constitute an eviction, although such acts do not amount to an actual physical disturbance of the tenant's possession. Keating v. Springer, 146 Ill. 495.

— Acts of Grave and Permanent Character.

Acts of a grave and permanent character, which amount to a clear intention on the part of the landlord to deprive the tenant of the enjoyment of the demised premises, will constitute an eviction. Rubens v. Hill, 213 Ill. 543; Barrett v. Boddie, 158 Ill. 483; Keating v. Springer, 146 Ill. 495; Walker v. Tucker, 70 Ill. 541; Lynch v. Baldwin, 69 Ill. 212; Hayner v. Smith, 63 Ill. 435; Saunders v. Fox, 178 Ill. App. 312; Magerstadt v. White, etc., Co., 176 Ill. App. 271; Risser v. O'Connell, 172 Ill. App. 66; McCormick v. Potter-Herrick, etc., Co., 147 Ill. App. 491; Parke v. Proby, 130 Ill. App. 572; Cassard v. Thornton, 119 Ill. App. 399; Kistler v. Wilson, 77 Ill. App. 154; Patterson v. Graham, 40 Ill. App. 402.

— Acts Showing Intention to Dispossess.

To constitute an eviction, there must be shown an intention of the landlord, manifested by acts, to deprive the tenant of the beneficial use of the premises—in brief, a violation of the landlord's contract of enjoyment. Dennick v. Ekdahl, 102 Ill. App. 202.

To constitute an eviction, the acts of the landlord in interference with the tenant's possession, must clearly indicate an intention on the part of the landlord that the tenant shall no longer continue to hold the premises. Grommes v. St. Paul. etc., Co., 147 Ill. 642; Morris v. Tillson, 81 Ill. 623; Walker v. Tucker, 70 Ill. 541; Hayner v. Smith, 63 Ill. 436; Rabe v. Lester, 175 Ill. App. 640; Risser v. O'Connell, 172 Ill. App. 66; Kastler v. Logg, 160 Ill. App. 412; McCormick v. Potter-Herrick, etc., Co., 147 Ill. App. 492; Cassard v. Thornton, 119 Ill. App. 399; Dennick v. Ekdahl, 102 Ill. App. 201; Kistler v. Wilson, 77 Ill. App. 154.

— Assault on Tenant.

Quarrels between landlord and tenant, coupled with assaults on tenant and members of his family, do not amount to an eviction, although the conduct of the landlord was so reprehensible that he was arrested and fined. Scanlan v. Hoerth, 151 Ill. App. 585.

- Bringing Lewd Women in Premises.

The habitual bringing by the lessor of lewd women under the same roof as that of the demised premises, in consequence of which nocturnal noise and disturbance was made, may be treated by the tenant as an eviction. Conrad, etc., Co. v. Hart, 62 Ill. App. 217.

- Constructing Fire Escapes.

The construction of fire escapes on the demised premises by the landlord in obedience to an ordinance does not operate as an eviction although the tenant was ordered by the city to leave unlocked the doors of the rooms communicating with the fire escapes, in consequence of which tenant's lodgers left the house. Cassard v. Thornton, 119 Ill. App. 401.

- Dispossession.

An eviction takes place where a material portion of the demised premises

are taken from the tenant by agents of the landlord, acting with his authority and knowledge. State Bank v. Wheeler, 146 Ill. App. 569.

To constitute an eviction of a tenant, he must be put out of either part of all of the demised premises, and must have given up possession as a result of acts of the landlord which warrant the tenant in doing so. Rabe v. Lester, 175 Ill. App. 640. To the same effect see Smith v. Wise, 58 Ill. 143.

— Entry by Landlord After Abandonment.

An entry by a landlord after the tenant has abandoned the demised premises does not constitute an eviction. Humiston v. Wheeler, 175 Ill. 516.

- Failure to Furnish Heat.

Where a landlord demises an apartment with a covenant to furnish steam heat, the fact that during the winter months the tenant's children have colds does not constitute an eviction where it does not appear that the colds were caused by the want of proper heat and where the tenant's claims of failure to furnish proper heat are based on the statements of a nurse that a temperature of from seventy-five to eighty degrees of heat was necessary for a baby, such temperature being deleterious to health. Parke v. Proby, 130 Ill. App. 573.

- Forcible Expulsion.

Forcible expulsion of a tenant from the demised premises is an eviction. Hayner v. Smith, 63 Ill. 432; Rabe v. Lester, 175 Ill. App. 640.

- Interference with Possession.

To constitute an eviction there must be an interference with the tenant's possession by the landlord or with his consent. McCormick v. Potter-Herrick, etc., Co., 147 Ill. App. 492.

- Leaving Property on Premises.

Where a landlord leased a lumber yard bordering on the Chicago River, and containing a dock, with a covenant empowering the lessor to enter to make repairs, the fact that lessor places a pile driver and piles lumber on the dock for the purpose of repairing it will not constitute an eviction. Magerstadt v. White, etc., Co., 176 Ill. App. 271.

Where a landlord and a tenant has a contract for the use by the tenant of an engine and boiler belonging to the landlord, the fact that the landlord left the engine and boiler on the demised premises after the expiration of the agreement for its use does not constitute an eviction. Baumgardner v. Consolidated, etc., Co., 44 Ill. App. 75.

- Loss of Title by Landlord.

Where a landlord is divested of title to the demised premises by the judgment of a court in an action against him to try title, the act of the sheriff in dispossessing the tenant is an eviction. Montanye v. Wallahan, 84 Ill. 358.

- Material Invasion of Possession.

To constitute an eviction, the acts of the landlord must be an interference with the full enjoyment of the demised premises in an important and not in a trivial matter, and must consist in an invasion of such enjoyment of a material character, tending to make further occupation attended with serious consequences or continuing discomfort. Parke v. Proby, 130 Ill. App. 572.

— Mere Trespass by Landlord.

The term "eviction" is not applicable to a mere trespass by the landlord. Barrett v. Boddie, 158 Ill. 483; Walker v. Tucker, 70 Ill. 541; Lynch v. Baldwin, 69 Ill. 212; Hayner v. Smith, 63 Ill. 435; Magerstadt v. White, etc., Co., 176 Ill. App. 271; McCormick v. Potter-Herrick, etc., Co., 147 Ill. App. 491.

- Moving Building.

Moving a building to another part of the lot does not constitute an eviction of a tenant who has a lease of the lower floor of such building, the lease not vesting in the tenant any rights in the land subjacent to the building. Leiferman v. Osten, 167 Ill. 100.

— Not Defending Mechanic's Lien.

The fact that a landlord has failed to defend against a petition for a mechanic's lien and had permitted a decree to be passed against him, with an order of sale, does not constitute an eviction so long as the possession of the tenant is not affected, and the landlord has not yet permitted the sale to ripen into a title. Leopold v. Judson, 75 Ill. 539.

- Nuisance by Landlord.

The creation of a nuisance by a landlord on or near the demised premises amounts to an eviction. Allott v. Bowers, 168 Ill. App. 574.

- Premises Rendered Useless.

Unless the premises are rendered useless to the tenant by the positive act of the landlord, or unless the tenant has been deprived, in whole or in part, of the possession or enjoyment of the demised premises, actually or constructively, by the landlord, there is no eviction. Barrett v. Boddie, 158 Ill. 484; Keating v. Springer, 146 Ill. 495; Lynch v. Baldwin, 69 Ill. 212; Hayner v. Smith, 63 Ill. 435.

- Repairing Plumbing.

Where tenants request a landlord to repair plumbing, and he complies, although not bound to do so, the fact that the work is negligently or unskillfully done by the plumber engaged, causing sewer gas to escape does not constitute an eviction. Dennick v. Ekdahl, 102 Ill. App. 201.

- Taking by Eminent Domain.

The taking of the demised property by eminent domain does not operate as an eviction. Cassard v. Thornton, 119 Ill. App. 401; Stubbings v. Evanston, 136 Ill. 41.

- Threat of Injury to Tenant.

The jury is warranted in finding an eviction from leased land where there is credible evidence that the landlord ordered the tenant off the demised premises, and threatened to shoot him if he ever set foot on the premises again. Kastler v. Logg, 160 Ill. App. 412.

- Where Tenant Retains Possession.

An act of a landlord which merely tends to diminish the beneficial enjoyment of demised premises does not amount to an eviction if the tenant retains possession. Keating v. Springer, 146 Ill. 495; Saunders v. Fox, 178 Ill. App. 312; Carey v. Tremont, 171 Ill. App. 607.

EVIDENCE.

It is the means by which any fact which is put in issue, is established or disproved. Hotchkiss v. Newton, 10 Georgia 567.

The word evidence, in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. Lawson v. Pinckney, 8 Jones & Spencer (N. Y.) 202.

Evidence, in its narrow and technical sense, is a machine for the discovery of truth, fettered and restrained by municipal law and by its local regulations, which may vary greatly in different countries. In its wider and universal sense it embraces all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. Hubbell et al. v. U. S., 15 Court of Claims R. 606.

Evidence includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. Mc-Williams v. Rodgers, 56 Ala. 93.

It is that which makes a matter in dispute clear, evident. Holland v. Ingram, 6 Rich. (S. C.) 52.

"Testimony" Distinguished.

There is a technical difference, strictly speaking, between "testimony" and "evidence," the former relating only to the statement made by a witness under oath or affirmation, while the latter includes all that may be submitted to the jury, whether it be the statement of witnesses or the contents of papers, documents or records, or the inspection of whatever the jury may be permitted to examine and handle during the trial. Jones v. Gregory, 48 Ill. App. 230.

When "Testimony" Synonymous.

In the ordinary use of the terms "testimony" and "evidence" they are often, if not usually, treated as synonymous, and in common parlance are understood to signify the same thing. Jones v. Gregory, 48 Ill. App. 230.

Where a certificate of evidence in a chancery suit commences with a statement that plaintiffs adduced certain "evidence," naming it, and concluded with the statement that such was all the "testimony" adduced by either party, the words quoted are to be construed as being used synonymously, so that the certificate did purport on its face to contain all the evidence in the cause. People v. Henckler, 137 Ill. 582.

There is a technical difference between testimony and evidence; strictly speaking, the former relates only to the statement made by a witness under oath or affirmation, while the latter includes all that may be submitted to a jury, whether it be the statement of witness or contents of papers, documents or records, or the inspection of whatever the jury may be permitted to examine and consider during the trial. However, in the ordinary use of these terms they are often, if not usually, treated as synomymous, and properly so, according to standard lexicographers. MacNeil's Ill. Evidence 501.

Includes Both Documentary and Oral Evidence.

The word "evidence" is broad enough to include documentary as well as oral evidence. Fitzgerald v. Benner, 219 Ill. 500.

Instructions.

It is not error to instruct the jury that a finding is to be made from the "evidence." instead of from a preponderance of the evidence, since the quoted word, as so used, means all the evidence, and does not permit the jury to find any facts from some of the evidence. Adams v. Pease, 113 Ill. App. 360.

Real.

Real evidence is either immediate or

where the thing which is the source of the evidence is present to the senses of the tribunal; reported evidence is where the thing which is the source of the evidence is not present to the senses of the tribunal, but the existence of it is conveyed to them through the medium of witnesses or documents. MacNeil's Ill. Evidence 501.

EVIDENCE AGAINST HIM.

An instruction in a criminal case that a reasonable doubt must grow out of the unsatisfactory nature of the "evidence against him" is erroneous since it might be understood by the jury as requiring them, by the quoted expression, to determine whether there was a reasonable doubt when viewed in the light of the evidence of the prosecution, and as excluding, by implication, a consideration of the evidence offered by the defendant. People v. Lee, 248 Ill. 71.

EVIDENCE LEGALLY TENDING TO PROVE.

Evidence from which, if credited, it may reasonably be inferred, in legal contemplation, the fact affirmed exists, laying entirely out of view the effect of all modifying or countervailing evidence. Bartelott v. International Bank, 119 Ill. 259; Frazer v. Howe, 106 Ill. 574.

EVIDENCE TENDING TO PROVE.

The expression "evidence tending to prove" means more than a mere scintilla of evidence—it means evidence on which the jury could, without acting unreasonably in the eye of the law, decide in favor of the plaintiff or party producing it. Offutt v. World's, etc., Exposition, 175 Ill. 475; Bartelott v. International Bank, 119 Ill. 272; Boyle v. Illinois C. R. Co., 88 Ill. App. 257. To the same effect see Magruder J. dissenting opinion Siddall v. Jansen, 143 Ill. 544; Hill v. Chicago C. Ry. Co., 126 Ill. App. 158.

EVIDENCES OF INDEBTEDNESS.

The expression "evidences of indebted-Immediate real evidence is | ness," used in section 16 of the Limitations Act (J. & A. ¶ 7211), relating to actions on written instruments, does not include an ordinary mortgage or deed of trust, unless containing a covenant to pay. Schifferstein v. Allison, 123 Ill. 665.

EVIDENTIARY CIRCUMSTANCES.

Circumstances with reference to which each party has the right to introduce evidence. Lake Erie & W. R. Co. v. Klinkrath, 227 Ill. 442; Illinois, etc., Co. v. Weber. 196 Ill. 530.

EVIDENTIARY FACTS.

The facts from which the existence of the principal facts is inferred, and which are mere evidence of such facts. Edgerton v. Weaver, 105 Ill. 48.

EX CONTRACTU.

The term "ex contractu," in section 121 of the Illinois Practice Act (J. & A. ¶ 8658), providing that in cases wherein the judgment of the appellate court is made final the supreme court may require, by certiorari, or otherwise, such cases to be certified to the supreme court for review and determination, with the same power and authority and with like effect as if such cases had been brought up for review by appeal or writ of error, but "in actions ex contractu" and in all cases sounding in damages, the judgment, exclusive of cost shall be more than \$1000, is used to include all suits and proceedings, both at law and in equity, for the enforcement of contracts where the measure of recovery is fixed or made approximately certain by some rule of law. Barber v. Estate of Keiser, 279 Ill. 287.

A claim founded upon a judgment against the executors of the will of a testator is an action "ex contractu" within section 121 of the Illinois Practice Act (J. & A. ¶ 8658). Barber v. Estate of Keiser, 279 Ill. 287.

EX OFFICIO.

Section 2 of the Revenue Act of 1898 | facto law, and invalid as to su (J. & A. ¶9517), providing that the | Johnson v. People, 173 Ill. 133.

county treasurer shall be "ex officio," supervisor of assessments, implies, by the quoted expression, that the treasurer shall be such supervisor from and by virtue of his office as treasurer, and does not create a new office. Foote v. Lake County, 206 Ill. 188.

EX OFFICIO CLERK.

A record on a writ of error reciting that a copy of a certificate of publication of a delinquent list was filed in the office of the county clerk and "ex officio clerk" of the county court is not a compliance with the requirement of section 186 of the Revenue Act (J. & A. ¶ 9405), requiring that such copy be filed as part of the record of the county court, the quoted expression, immediately following the expression "county clerk," leaving it uncertain where the copy was filed, whether in the office of the county clerk, or in the office of the clerk of the county court. Drennen v. People, 222 Ill. 593.

EX PARTE.

Implies Absence of Some of Parties.

The term "ex parte" implies an examination in the presence of one of the parties, and in the absence of the others. Ballance v. Flisby, 3 Ill. 62.

Examination in Absence of Both Parties Excluded.

An examination of a witness in the absence of both parties by one who is sole arbitrator is not an "ex parte" examination. Lincoln v. Cook, 3 Ill. 62.

EX POST FACTO LAW.

One which renders an act punishable in a manner in which it was not punishable when it was committed, whether by personal or pecuniary penalties. Wilson v. Ohio & M. Ry. Co., 64 Ill. 546.

The rule is, that if the law by which punishment is to be inflicted is changed to the prejudice of the defendant after the commission of the crime, it is an ex post facto law, and invalid as to such offense. Johnson v. People, 173 Ill. 133.

A law which provided for the infliction of punishment upon a person for an act done, which when it was committed was innocent (1 Black. Comm. p. 46.) Enlarging upon this definition * * *, a law which aggravated a crime or made it greater than it was when committed, or one which changed the punishment or inflicted a greater punishment than the law annexed to the crime when committed, or a law which changed the rules of evidence and received less or different testimony than was required at the time of the commission of the crime, in order to convict the offender, was included in the definition of an ex post facto law. (Calder v. Bull, 3 Dall. (U. S.) 386, per * * * No act that Chase, J. at 390.) mollified the rigor of the criminal law was regarded as an ex post facto law. The same view was taken by Dennis, J. in Hartung v. People, 22 N. Y. 105. Approved, Peckham, J. in People v. Hayes, 140 N. Y. 490.

Blackstone's Definition.

An ex post facto law is where, after an action (indifferent in itself) is committed, the legislature then for the first time, declare it to have been a crime, and inflict a punishment upon the person who committed it. Coles v. Madison County, 1 Ill. 155.

Federal Constitution.

The expression "ex post facto," used in section 9 of article 1 of the Constitution of the United States, is a technical term, and must be construed according to its legal import, as understood and used by the most approved writers on law and government. Coles v. Madison County, 1 Ill. 155.

The expression "ex post facto," used in section 9 of article 1 of the Constitution of the United States, is applicable only to laws relating to crimes, pains and penalties. Coles v. Madison County, 1 Ill. 156.

Where a statute passed in 1819 imposed a penalty for bringing negro slaves into the state and emancipating them without giving bond, a statute of 1825 repealing the act imposing a penalty for

its violation is not an "ex post facto law," within the meaning of section 9 of article 1 of the Constitution of the United States, although such repealed act may have the effect of barring the recovery of a penalty incurred for violation of the former act, in a suit commenced before the passage of the repealing act. Coles v. Madison County, 1 Ill. 159.

EXACTION.

"'Exaction' is a wrong done by an officer, or one pretending to have authority, in demanding or taking any reward or fee for that matter, cause or thing for which the law alloweth not any fee at all.

* * 'Extortion' is where an officer demandeth and wresteth a greater summe or reward than his just fee."
(Termes de la Ley, Exaction).

EXACTLY PARALLEL.

A city ordinance providing for the construction of a pavement to be composed of a foundation of concrete, on which was to be placed two inches of sand, and on top of that a layer of bricks each four inches thick, the upper surface of the concrete to be "exactly parallel" with the surface of the pavement when completed, does not mean, by the quoted expression, that the line of the surface of the concrete bed shall be on a level with the surface of the pavement, but parallel with and six inches below the surface of the pavement when completed. Cunningham v. Peorla, 157 Ill. 504.

EXAGGERATED.

The entire testimony of a witness is not to be rejected by a jury, in its discretion, because he has knowingly and willfully exaggerated any fact or circumstances, but only when he has knowingly and willfully sworn falsely to a material fact. MacNeil's Ill. Evidence 355.

EXAMINE.

"Examine," as applied to the human body, either living or dead, would not ex vi termini, include the idea of cutting it up. It does not, in the clause of a contract that any medical adviser of the company should be allowed to examine the person or body of the assured as often as he required in respect to the alleged injury or cause of death. Sudduth v. Travelers' Ins. Co., 106 Fed. 823.

"Examine," if not directly expressing, yet necessarily implies the power of allowance or rejection. Nevada v. Doran, 5 Nev. 412.

EXAMINED.

The fact that in order to obtain renewal certificates of guaranty insurance contracts, bank officials certify that from time to time they have "examined" the accounts of the bank, is not to be construed as a representation that such a thorough and exhaustive examination of the books of the bank had been made as would necessarily discover the slightest irregularity which might exist, however cunningly covered up, such as adding a cipher to the figures "300" among 738 other items in the same book. U.S., etc., Co. v. First, etc., Bank, 233 Ill. 484.

EXCEPT.

A bequest of all testator's property "except" so much a year to A., gives A. an annuity in perpetuity. Hill v. Potts, 31 L. J. Ch. 380; 2 J. & H. 634.

EXCEPT AS OTHERWISE PROVIDED.

The expression "except as otherwise provided," used in section 71 of the Administration Act (J. & A. ¶ 120), relating to priority in the payment of claims against the estates of decedents, refers to exceptions by some provision of that or some other statute, or by order of the court made in the fullness of its probate jurisdiction. Lillard v. Noble, 159 Ill. 320.

EXCEPT THE LAW OTHERWISE DIRECTS.

Where a testator has several sons and daughters at the time of making a will | he has already given, in order that it

which shows an intention to deal equitably with all of them, and leaves to a son in fee his improved and productive farm, but devises to the daughters an estate in unimproved lands, the nature of which estate is not clearly stated in the will, the fact that the testator provides that the shares of the children dying childless shall revert to the other children "except the law otherwise directs" tends to support the construction that the testator intended that the daughters should have an estate of inheritance, since in case of the death of such daughters without children, and in case the law did not provide any other person to take the title, it would pass to the surviving brothers and sisters by the law of descent. while if the daughters left husbands, the law of descent would direct otherwise. so that the quoted clause is without effect unless such construction be adopted. Connor v. Gardner, 230 Ill. 272.

EXCEPTING.

The words "excepting" and "reserving" as used in a deed are not conclusive as to whether an exception or a reservation is intended. Gould v. Howe, 131 Ill. 496.

A lease, "excepting free passage" over premises demised,-may create a covenant. Bush v. Cole, Carth. 232; 12 Mod. 24; nom. Bush v. Calis. Show. 247; Cole's Case, 1 Salk. 196.

EXCEPTION.

A clause in a deed which withholds from its operation some part or parcel of the thing, which, but for the exception, would pass, by the general description, to the grantee. Gould v. Howe, 131 III. 496.

"An exception is a clause of a deed whereby the feoffor, donor, grantor, lessor, etc., doth except somewhat out of that which he had granted before by the deed." Shep. Tonchst. 75; Darling v. Crowell, 6. N. H. 423.

"An exception is that by which the grantor excludes some part of that which may not pass by the grant, but may be taken out of it and remain with himself: A valid exception operates immediately." Cooper v. Stuart, 14 App. Cas. 286.

An exception is something reserved by the grantor out of that which he has before granted. It is indispensable to a good exception that the thing excepted should be a part of the thing previously granted, and not of any other thing. Case v. Haight, 3 Wend. (N. Y.) 635.

"It is a rule of construction, that when there is a grant and an exception out of it, the words of the exception are to be considered as the words of the grantor, and to be construed in favor of the grantee." Bullen v. Denning, 5 B. & C. 842.

If an exception occurs in the description of the offense in the statute, the exception must be negatived, or the party will not be brought within the description. But, if the exception comes by way of proviso, and does not alter the offense, but merely states what persons are to take advantage of it, then the defence must be specially pleaded, or may be given in evidence under the general issue, according to circumstances. Simpson v. Ready, 12 M. & W. 740.

An exception is a formal protest against the ruling of the court upon a question of law, and a bill of exceptions is a written statement, settled and signed by the judge, of what the ruling was, the facts in view of which it was made, and the protest of counsel. People v. Torres, 38 Cal. 142.

Exception and Proviso.

The difference between an exception and a proviso in a statute is that the first exempts absolutely from the operation of the enactment, whereas the latter only defeats the operation of the enactment conditionally. Waffle v. Goble, 53 Barb. (N. Y.) 522.

Exception and Reservation.

Exception is always a part of the thing granted, and of a thing in being; and a reservation is of a thing not in being, but is newly created out of lands and tenements devised; though exception and reservation have often been used promiscuously. State v. Wilson, 42 Maine 21.

An exception is something taken out of that which is before granted, by which means it does not pass by the grant, but is severed from the estate granted. A reservation is something issuing out of the thing granted, and not a part of the thing granted. Cunningham v. Knight, 1 Barb. (N. Y.) 407.

A reservation in a deed, or other instrument, is of a thing not in being at the time of the grant, but which is merely created by it; while an exception is a part of the thing granted. Gould v. Glass, 19 Barb. 192.

EXCESS.

Interest collected by a city upon a "flat" assessment without authority of law is not "excess," within the meaning of section 84 of the act of 1897 (J. & A. ¶ 1477), known as the Local Improvement Act, relating to crediting the excess collected on assessments over the cost of the improvement, where the interest was voluntarily paid by the persons assessed with full knowledge of the facts, although under a mistake of law. Chicago v. McGovern, 226 Ill. 408.

Excessive.

In order to constitute bail "excessive" it must be, per se, unreasonably great and clearly disproportionate to the offense involved, or the peculiar circumstances appearing must show it to be so in the particular case. Ex parte Ryan, 44 Cal. 558.

EXCHANGE.

Blackstone's Definition.

A mutual grant of equal interests, the one in consideration of the other. Hartwell v. DeVault, 159 Ill. 332.

Implies Equality of Interest.

The word "exchange" implies that the estates exchanged must be equal in quantity, not of value, for that is immaterial, but of interest, as a fee simple for a fee simple, a lease for twenty years for a lease for twenty years, and the like. Hartwell v. DeVault, 159 Ill. 332.

As Applied to Real Estate.

The word "exchange," when used in reference to real estate, has at common law the definite and well defined meaning expressed by Blackstone. Hartwell v. DeVault, 159 Ill. 332.

As Sale Where Consideration Is Property.

A transaction where the purchase price is paid by the transfer of other property, is properly denominated an "exchange." Close v. Browne, 230 Ill. 236.

Commercial Sense.

The difference in the value of the same sum of money at two different and distant places or countries. Hill v. Todd, 29 Ill. 102.

Dramshops Act.

The word "exchange," used in section 12 of the act of 1907 (J. & A. ¶4648), known as the Local Option Act, relating to penalties for violation of the act, is used in its ordinary sense. People v. Young, 237 Ill. 202.

Exchange or Sale.

"The terms 'exchange' and 'barter,' used in the order (an order for an election to determine whether or not the sale, exchange, or barter of intoxicating liquors should be prohibited in a certain county), are not synonymous with 'sale,' as we understand the words, but are materially different in meaning." Ex parte Beaty, 21 Tex. Ap. 427.

Dower Act.

The term "exchange," used in section 17 of the Dower Act (J. & A. ¶ 4253), relating to dower in case of exchange of land, has the same meaning as at common law. Hartwell v. DeVault, 159 Ill. 332.

Where a wife joins in a conveyance of lands in consideration of a provision in lieu of her dower, and the husband receives as consideration of the conveyance an undivided interest in other land, together with other property, the transaction does not constitute an "exchange," within the meaning of section 17 of the Dower Act (J. & A. ¶ 4253), relating to

dower in case of exchange of land. Hartwell v. DeVault, 159 Ill. 333.

— Conveyance Must Use Word "Exchange."

To constitute an "exchange," within the meaning of section 17 of the Dower Act (J. & A. ¶ 4253), relating to dower in case of the exchange of land, it is not sufficient that the parties make ordinary deeds, but the deed by which the transaction is consummated must be one of exchange, and to that mode of conveyance the use of the word "exchange" is essential. Hartwell v. DeVault, 159 Ill. 332.

EXCLUDING.

"So far as we are aware, there is no technical meaning given to the word 'excluding' in marine insurance, and the customary meaning of the word does not differ greatly from that of the words 'prohibiting' or 'prohibited from.'" Parker v. China Mutual Ins. Co., 164 Mass. 237.

EXCLUSIVE.

"But even with the word 'exclusive' in the ordinance given full force and effect as a legal and valid provision, we think still that it would be by 'mere implication' that it could be held that the village of Rogers Park by its use had shut out itself and the city of Chicago, by aunexation its successor in public duties to the inhabitants of its territory, from the exercise of one of the most necessary and ordinary of municipal functions. To our mind the granting of an 'exclusive' right and privilege to one person means that the grantor will not grant the same right and privilege to another person-not that he binds his own hands otherwise. government, possessing powers that effect the public interests and having entered into a contract involving said interests, is not by means of implications or presumptions to be disarmed of powers necessary to accomplish the objects of its existence. Any ambiguity in the terms of such a contract must operate against the adventurers and in favor of the pub-



lic, and the contractors can claim nothing that is not clearly given by the act; it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created. Those who insist that the government has surrendered any of its powers or agreed that they may be diminished, must find clear warrant for such a contention before it can be heeded. Charles River Bridge Co. v. Warren Bridge, 11 Peters, 420." Rogers Park Water Co. v. City of Chicago, 131 Ill. App. 53.

EXCLUSIVE FISHERY RIGHT.

By the common law, a right to take fish belongs so essentially to the right to the soil in streams or bodies of water, where the tide does not ebb and flow, that if the riparian proprietor owns upon both sides of such stream, no one but himself may come upon the limits of his land and take fish there; and the same rule applies so far as his land extends, to-wit, to the thread of the stream, where he owns upon one side only, within which limits, by the common law, his right of fishery is sole and exclusive, unless restricted by some local law or well established usage of the State where the premises may be situate. The People v. Bridges, 142 Ill. 43; Beckman v. Kreamer, 43 Ill. 447.

EXCLUSIVELY.

A direction that a Charitable Bequest shall be paid "exclusively" out of pure personalty, implies marshalling the assets. Wills v. Bourne, L. R. 16 Eq. 487; 43 L. J. Ch. 89; Re Arnold, 57 L. J. Ch. 682; 37 Ch. D. 637; 58 L. T. 469; 36 W. R. 424; 1 Jarm. 237.

EXCLUSIVE USE.

"Exclusive use," with reference to adverse possession, does not mean that no one used the way except the claimant of the easement, and means no more than that his right to do so does not depend on a like right in others. Schmidt v. Brown,

226 Ill. 599. To the same effect McKenzie v. Elliott, 134 Ill. 163.

EXCLUSIVELY USED FOR RELIGIOUS PURPOSES.

A house owned by the bishop of a Catholic diocese and held in trust for the use of a church, by which it is used as the residence of the parish priest assigned to that church, is not "exclusively used for religious purposes" within the meaning of section 3 of article 9 of the Constitution of 1870, relating to exemptions from taxation, although such residence contains a chapel where religious services are celebrated at times. Muldoon v. Board of Review, 254 Ill. 337.

EXCUSABLE HOMICIDE.

The unfortunate or accidental killing of another, without intention, and in doing a lawful act with ordinary circumspection. Hopkinson v. People, 18 Ill. 265.

By Misadventure.

"Excusable homicide, by misadventure," within the meaning of the Criminal Code, is a species of homicide where a person doing a lawful act, without any intention of killing, yet unfortunately kills another. Criminal Code § 152 (J. & A. ¶ 3767); Mutual, etc., Co. v. Laurence, 8 Ill. App. 492.

EXCUSABLE MISTAKE.

An excusable mistake in the meaning of a law is one which occurs after all means of information that suggest themselves to a man of ordinary care and prudence have been exhausted. Williams v. McKay, 46 N. J. Eq. 60 citing Hodges v. New England Screw Co., 1 R. I. 312.

EXECUTE.

The word "execute," as used in powers relative to written instruments frequently includes delivery. McCormick v. Unity Co., 239 Ill. 312. See Hunt v. Weir, 29 Ill. 85, where it is held that a note is not executed till it is delivered.

EXECUTE AND DELIVER.

A power to "execute and deliver" bonds includes the power to sell them. McCormick v. Unity Co., 239 Ill. 312.

EXECUTED.

Deed-Delivery Excluded.

The term "excluded" as applied to a deed cannot embrace the delivery, for that is the last acts done, and follows the acknowledgment, and is not part of the execution of the deed. Stuart v. Dutton, 39 Ill. 93.

Contract.

A contract is executed when nothing remains to be done by either party. Fox v. Kitton, 19 Ill. 533.

Statutes of Uses.

An active trust it is not "executed" by the Statute of Uses until the trustee shall have completed the last active duty imposed upon him by the instrument creating the trust. McFall v. Kirkpatrick, 236 Ill. 294.

Trust.

A trust is executed, when no act is necessary to be done to give it effect,—when the trust is fully and finally declared in the instrument creating it. Massey v. Huntington, 118 Ill. 90.

One where the estate passes to the trustees at its creation. Yokem v. Hicks, 93 Ill. App. 671.

A trust fully and finally declared by the person creating it, so that nothing further remains to be done in order to make it effective. McCartney v. Ridgway, 160 Ill. 156.

- "Executory Trust" Distinguished.

There is a well settled distinction between what are called "executed trusts" and "executory trusts," the purpose and advantage of which is more generally to enable the courts to avoid the rule in Shelly's case, for the purpose of giving effect to a devisor, grantor, or donor. Nicoll v. Ogden, 29 Ill. 384.

EXECUTION.

As Process.

The final step in a suit at law. Dobbins v. First, etc., Bank, 112 Ill. 566.

The ordinary final process on judgments at law. Armsby v. People, 20 Ill. 158.

- Object.

The object of an execution is to obtain satisfaction of the judgment on which it issues, therefore any act of the creditor, or directions from him to the sheriff, diverting the execution from this purpose, renders it dormant and imperative against other creditors, and clothes them with priority. (Kellog v. Griffin, 17 Johns. 274; Knower v. Bernard, 5 Hill, 377.) Everingham v. National, etc., Bank, 124 Ill. 536; Gilmore v. Davis, 84 Ill. 489; Koren v. Roemheld, 6 Ill. App. 277.

- Attachment for Contempt As.

An attachment for contempt for disobedience of an order to pay money is a civil execution for the benefit of the injured party, though carried on in the form of a criminal process for contempt of the authority of the court. Barnes v. Chicago, etc., Union, 232 Ill. 408; Buck v. Buck, 60 Ill. 106; Crook v. People, 16 Ill. 538.

- "Fieri Facias" Synonymous.

An execution is in legal parlance called a fieri facias. Armsby v. People, 20 III. 158.

Of Instruments.

The execution of a deed is manifested by the signature and seal of the grantor. Stuart v. Dutton, 39 III. 93.

- Includes Delivery of Note.

The word "execution," used in section 52 of the Practice Act (J. & A. ¶8589), providing that no person shall be permitted to deny, on trial, the execution of written instruments pleaded or set up in defense or set off unless the plea is verified by affidavit, includes the delivery of the note. Hunt v. Weir, 29 Ill. 85.

EXECUTION OR OTHER FINAL PROCESS.

A certified copy of a decree ordering the sale of property under a petition to establish a mechanic's lien is not an "execution or other final process," within the meaning of section 46 of the Chancery Act of 1845, now section 47 of the Chancery Act (J. & A. ¶ 927), relating to process to enforce decrees in chancery. Armsby v. People, 20 Ill. 158.

EXECUTIVE DEPARTMENT.

That department of government which executes and compels obedience to the laws. Devine v. Brunswick-Balke Co., 270 Ill. 509.

Includes State Board of Health.

The State Board of Health, as created by the statute, is a branch of the executive department of the state. People v. Dunn, 255 Ill. 291.

EXECUTIVE POWER.

That power, wherever lodged, which compels the laws to be enforced and obeyed. People v. Morgan, 90 Ill. 562.

That power which compels obedience to the laws and executes them. Witter v. Cook County, 256 Ill. 621.

EXECUTOR.

[L. Lat. executor; L. Fr. executour.] A person appointed by a testator, in his last will and testament, to carry it into effect or execution after his decease, and to dispose of his property according to the tenor of the will. Wood's Inst. 310. Cowell. Blount.

This word has been adopted, without change, from the Latin of the earliest writers on English law. Glanv. lib. 7, c. 6. Bract. fol. 20, 61. Mag. Chart. Joh. c. 26. Mem. in Scacc. H. 5 Edw. I. Stat. Westm. 2, c. 19. See supra. Lord Hardwicke, in Androvin v. Poilblanc, calls it a "barbarous term," unknown to the civil law, the proper term in that law, as to goods, being hæres testamentarius. 3 Atk. 299, 301.

EXECUTOR DE SON TORT.

A person who without any authority intermeddles with the estate of a decedent and does such acts as properly belong to the office of an executor or administrator, and thereby becomes a sort of quasi executor, although only for the purpose of being sued or made liable for the assets with which he has intermeddled. Grace v. Seibert. 235 Ill. 192.

Blackstone's Definition.

Where one, not the executor or administrator, intermeddles with the personal property of a deceased person, and assumes to act as executor, or appropriates the goods to his own use, he renders himself liable as executor de son tort. Blackstone, Book 2, page 507; Williams on Ex's Vol. 1, p. 210; Brown v. Durbin, 5 J. J. Marsh, 170; Mitchell v. Lunt, 4 Mass. 654; Hawkins v. Johnson, 4 Blackford, 21; Wilson v. Davis, 37 Ind. 141; Wilbourne v. Wilbourne, 48 Mass. 38. The fact that he is a legatee can make no difference. Like a lawfully appointed executor, he will be responsible for the goods which he may receive and no more. Ch. 3. Sec. 125, R. S. Truett Sons & Morgan v. Cummons, 6 Ill. App. 74.

What Constitutes.

What facts will constitute an executor de son tort of an estate is a question of law for the court, but the determination of the facts, if controverted, is for the jury. Rohn v. Rohn, 204 Ill. 188.

EXECUTORY CONTRACT.

Whilst any act remains to be done, a contract is executory. Fox v. Kitton, 19 Ill. 532.

A contract providing for the sale of grain to be shipped on shipping instructions to be given by vendee is executory. Acme-Evans Co. v. Hunter, 194 Ill. App. 544.

EXECUTORY DEVISE.

Such a limitation of a future estate and interest in lands as the law admits in the case of a will, though contrary to the rules of limitations in conveyances at common law. There are two kinds of executory devises relative to real estate:
(1) Where the devisor parts with his whole estate, but, upon some contingency, qualifies the disposition of it and limits an estate on that contingency; (2) where the testator gives a future interest, to arise upon a contingency, but does not part with the fee in the meantime. Ashby v. McKinlock, 271 Ill. 260; Glover v. Condell, 163 Ill. 586.

An executory devise or bequest of lands or personal property is such a disposition of them by will that thereby no estate vests at the death of the devisor, but only on some future contingency. Defrees v. Brydon, 198 Ill. App. 265.

In a general sense,—a devise of a future interest in lands, not to take effect at the testator's death, but limited to arise and vest upon some future contingency. 1 Fearne on Remainders, 382.

A limitation by will, of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 Powell on Dev. (by Jarman), 237. Lewis on Perpetuity, 71, 72.

It differs from a remainder in three material points: 1. It needs no particular estate to support it. 2. A fee simple or other less estate may be limited by it—after a fee simple. 3. A remainder may be limited, of a chattel interest, after a particular estate for life in the same property. Doe, Lessee of Poor v. Considine, 6 Wallace (U. S.) 475.

Every devise of a future interest, which is not preceded by an estate of freehold created by the same will, or which, being so preceded, is limited to take effect before or after, and not at the expiration of such prior estate of freehold, is an executory devise. Thompson v. Hoop, 6 Ohio St. 487.

Blackstone's Definition.

Such a disposition of lands by will that thereby no estate vests at the death of the devisor but only on some future contingency. Miller v. Rowan, 251 Ill. 355. To the same effect see Thompson v. Becker, 194 Ill. 122; Glover v. Condell, 163 Ill. 593.

Where a testator devises his whole estate in fee but limits a remainder thereon to commence on a future contingency, as if a man devises land to A and his heirs, but if he dies before he is twenty-one, then to B and his heirs, this remainder, though void in a deed, is good by way of executory devise. Johnson v. Buck, 220 Ill. 235; Ackless v. Seekright, 1 Ill. 78.

Chancellor Kent's Definition.

A limitation by will of a future contingent interest contrary to the rules of limitation of contingent estates at common law. Pitzer v. Morrison, 272 Ill. 293; Smith v. Kimbell, 153 Ill. 372.

One species of executory devise, as applied to lands, is where the devisor parts with his whole estate, but upon some contingency qualifies the disposition of it, and limits an estate on that contingency. Ashby v. McKinlock, 271 Ill. 261; Glover v. Condell, 163 Ill. 586.

Nature of Estate Created.

The estate created by an executory devise is such an interest as will pass by descent, but descends to those persons who are the heirs of the executory devisee at the time the event happens which determines the prior estate. Miller v. Rowan, 251 Ill. 358; Ackless v. Seekright, 1 Ill. 48.

The estate created by an executory devise is a mere expectancy, dependent upon the happening of the contingency. Gannon v. Peterson, 193 Ill. 380.

Elements.

One of the contingencies on which an executory devise may be limited is the death of the first taker without issue. Williams v. Elliott, 246 Ill. 552.

Must Not Violate Rule Against Perpetuities.

An executory devise is void when too remote, under the rule against perpetuities. Johnson v. Buck, 220 Ill. 235; Strain v. Sweeny, 163 Ill. 606; Glover v. Condell, 163 Ill. 585; Smith v. Kimbell,

153 Ill. 373; Summers v. Smith, 127 Ill. 650.

Effect.

A gift over upon a definite failure of issue does not alter the construction of a preceding limitation, but engrafts upon it an executory devise to operate upon the happening of the event specified. Glover v. Condell, 163 Ill. 586.

As Applied to Personalty.

Although at common law there could be no limitation over of a chattel, equity has established the doctrine that where there is a gift of personal property to one for life, with a limitation over to another, such limitation is good as an executory devise. Glover v. Condell, 163 Ill. 589; Welsch v. Belleville, etc., Bank, 94 Ill. 204.

All future interests in personalty, whether vested or contingent, and whether preceded by a prior interest or not, are in their nature executory, and fall under the rules governing executory devises. Glover v. Condell, 163 Ill. 586.

Executory devises of personalty have been divided into three kinds, the second of which is where there is a complete disposition of the property, and there is a substitution of another person to take in some event which is to defeat or abridge the gift. Glover v. Condell, 163 Ill. 586.

May Limit Fee Upon Fee.

Although a fee cannot be limited upon a fee by deed, yet it can be so limited by will by way of executory devise. Ashby v. McKinlock, 271 Ill. 261; Johnson v. Buck, 220 Ill. 235; Kron v. Kron, 195 Ill. 183; Strain v. Sweeny, 163 Ill. 605; Glover v. Condell, 163 Ill. 592; Palmer v. Cook, 159 Ill. 303; Smith v. Kimbell, 153 Ill. 372; McCampbell v. Mason, 151 Ill. 509; Summers v. Smith, 127 Ill. 650; Siegwald v. Siegwald, 37 Ill. 438; Ackless v. Seekright, 1 Ill. 78.

What Does Not Constitute.

An executory devise is not created if the estate devised to the first taker is such that he can, by virtue of his ownership, alienate the estate in fee simple, such a

devise being indestructible by any act of the owner of the preceding estate. Williams v. Elliott, 246 Ill. 552; Burton v. Gagnon, 180 Ill. 349; Wolfer v. Hemmer, 144 Ill. 560; Ackless v. Seekright, 1 Ill. 78.

EXECUTORY GIFT.

"A bequest to X for life, with remainder to A, and if A die unmarried or without children, to B, is, according to the ordinary and literal meaning of the words, an executory gift over, defeating the absolute interest of A in the event of A dying at any time unmarried or without children." Thomas v. Miller, 161 Ill. 71, citing Lord Carons in O'Mahoney v. Burdett, 12 Moak, 22.

EXECUTORY TRUST.

One which is not fully and finally declared, but requires some other act or acts in order to perfect it and carry out the intention of the settlor, while an executed trust is one fully and finally declared by the person creating it, so that nothing further remains to be done in order to make it effective. McCartney v. Ridgway, 160 Ill. 156.

Where the beneficiary is not yet clothed with the equitable title, but has a mere right to have some act done which will vest in him such equitable title, the trust is called executory because of the necessity of the performance of this intermediate act. Nicoll v. Ogden, 29 Ill. 385.

In one sense, all trusts are executory, or to be executed—that is something has to be done to perform the trust, that the cestui que trust may enjoy the benefits of the trust to which he is entitled, as where one holds a legal title in trust for the benefit of another in whom is already vested the equitable title, with the right to be clothed with the legal title. Nicoll v. Ogden, 29 Ill. 385.

EXEMPLARY DAMAGES.

that he can, by virtue of his ownership, alienate the estate in fee simple, such a torts are committed with fraud, actual

malice, or deliberate violence or oppression, or where the defendant acts wilfully, or with such gross negligence as to indicate a wanton disregard of the rights of others. Hanewacker v. Ferman, 152 Ill. 325; Consolidated, etc., Co. v. Haenni, 146 Ill. 628.

"Vindicative Damages" Synonymous.

The expressions "exemplary damages" and "vindicative damages," as used in instructions, are convertible terms, meaning one and the same thing. Hackett v. Smelsley, 77 Ill. 121.

"Punitive Damages" Synonymous.

Exemplary damages, punitive damages, or damages recovered as a punishment, all mean the same thing. Hanewacker v. Ferman, 152 Ill. 325; Lowry v. Coster, 91 Ill. 185; Roth v. Eppy, 80 Ill. 287.

Nature.

The theory of exemplary damages involves a blending of the interests of society in general with those of the aggrieved individual in particular, such damages and fines imposed in the name of the people, depending on the same principle, both being penal and intended to deter others from like offenses. Chicago, etc., Co. v. Mahoney, 230 Ill. 568. To a similar effect see Illinois & St. L. R. Co. v. Cobb, 68 Ill. 54; Cutler v. Smith, 57 Ill. 256; Chicago v. Martin, 49 Ill. 244; Hawk v. Ridgway, 33 Ill. 475; Foote v. Nichols, 28 Ill. 488; Ously v. Hardin, 23 Ill. 354; Ball v. Bruce, 21 Ill. 164; Hosley v. Brooks, 20 Ill. 117; Mc-Namara v. King, 7 Ill. 436; Grable v. Margrave, 4 Ill. 373.

Exemplification.

An exemplification is a perfect copy of a record or office book, so far as relates to the matter in question. Dickinson v. Railroad Co., 7 W. Va. 413.

EXEMPT.

The word exempt may be taken to mean precluded from being chargeable. King v. The Leeds and Liverpool C. Co., 5 East 331.

Section 95 of the Revenue Act (J. & A. ¶ 9313), giving a right of appeal to one claiming his property is "exempt" from taxation where the board decides that it is taxable covers by the quoted expression, all cases where it is claimed by the property owner that his property is not subject to taxation in this state, whether such claim be based on some specific provision of law which affirmatively exempts such property or not. Dutton v. Board of Review, 188 Ill. 391.

EXEMPTION.

An exemption is but a privilege for the time being—mere grace and favor dependent on the will of the state, and where it exists by statute, it may be reduced or withdrawn by statute. Myers v. Field, 146 Ill. 58.

The word "exemption" is defined as an "immunity"; a "privilege." A person exempt is one freed or released from some duty, but he is not necessarily disqualified. People v. Rawn, 90 Mich. 379.

EXEMPTION FROM TAXATION.

The phrase "exemption from taxation" has been construed in certain instances to mean a positive, affirmative exemption from taxation granted by some specific provision of law. Dutton v. Board of Review, 188 Ill. 391.

EXERCISE OF ANY OF ITS COR-PORATE POWERS.

The maintenance of a suit by a foreign corporation is not the "exercise of any of its corporate powers," within the meaning of section 1 of the act of 1905 (J. & A. ¶2526), known as the Foreign Corporations Act. Alpena, etc., Co. v. Jenkins, etc., Co., 244 Ill. 361; Delta, etc., Co. v. Kearns, 160 Ill. App. 100.

EXISTING.

On death of A. "without issue, his part of the property to fall to whatever existing member of my family he may be disposed to will it to";—"existing" means, living at the date of A.'s Will. Sinnott v. Walsh, 5 L. R. Ir. 27.

A conveyance subject to "existing leases and lettings" does not comprise parol unenforceable leases. Rice v. O'Connor, 11 Ir. Ch. Rep. 510.

EXISTING RIGHT OF WAY.

The "existing right of way" [in St. 1892, C. 275, providing that "no right of way across any railroad track or location which is in use for railroad purposes shall hereafter be acquired by prescription; but nothing herein contained shall affect any existing right of way,"] means a right which at the time of the statute had fully ripened into a right by prescription or otherwise. Simpson v. Boston & Maine R. Co., 176 Mass. (1900), 359.

EXPECTANCY.

The condition of being referred to a future time, or of dependence upon an expected event; contingency as to possession and enjoyment. Ayers v. Chicago, etc., Co., 187 Ill. 58.

An estate giving a present or vested contingent right of future enjoyment; one in which the right of pernancy of the profits is postponed to some future period. Ayers v. Chicago, etc., Co., 187 Ill. 58.

Of expectancies there are two sorts—one created by the act of the parties, called a "remainder;" the other by act of law, called a "reversion." Ayers v. Chicago, etc., Co., 187 Ill. 58.

A mere hope unfounded in any limitation, provision, trust or legal act whatever; such as the hope which an heir apparent has of succeeding to the ancestor's estate. Jeffers v. Lampson, 10 Ohio St. 106.

EXPECTANT HEIR.

"Every person who is entitled either absolutely or contingently, to any reversion or remainder in a property or a portion, or who has the hope of succession to the property of an ancestor or relative, either by reason of his being the heir apparent or presumptive, or by reason merely of any supposed or presumed af-

fection on the part of his ancestor or relative, is an expectant heir within the meaning of the rule" for setting aside catching bargains. Seton, 1367, citing Beynon v. Cook, 10 Ch. 391, n. g.: Aylesford v. Morris, 8 Ch. 497: Tyler v. Yates, 6 Ch. 665: Tottenham v. Emmett, 14 W. R. 3: James v. Kerr. 40 Ch. D. 449.

EXPECTATION.

The term "expectation," used in section 1 of the act of 1909 (J. & A. ¶ 9597), known as the Inheritance Tax Act, has reference only to possession, and is used in contra distinction from that term, and denotes a condition where the title is vested while the possession is deferred, and not an expectation of becoming vested both with the title and possession, where neither is now vested. People v. McCormick, 208 Ill. 445.

EXPEDITION.

The term "expedition" is not to be confined to that movement of the troops which immediately precedes the actual conflict and shock of battle. Leathers v. Greenacre, 53 Me, 573.

EXPEND.

One of the meanings given by all lexicographers of "expend" is "to dispose of." Norman v. Central Kentucky Lunatic Asylum, 92 Ky. 16.

One cannot expend, though he may pledge or mortgage, what he has not actually in hand. In re Marquis of Bristol's Settled Estates (1893), 3 Ch. 161.

EXPENSE.

Actual expense or outlay. Bull v. Quincy, 155 Ill. 572.

"Expenses" mean, actual disbursements, not allowances for loss of time. Jones v. Carmarthen, 10 L. J. Ex. 401; 8 M. & W. 605.

EXPENSES OF THE FAMILY.

Criterion.

The criterion to be followed in determining what is a family expense is:

"Was the expenditure a family expenditure; was it incurred for, on account of, and to be used in the family; was the thing for which the expenditure was incurred actually used or kept for use in the family?" Von Platen v. Krueger, 11 Ill. App. 630.

Compared with "Necessaries."

"Family expenses," under the statute, embrace much more than "necessaries" under the common law. Fitzgerald v. McCarty, 55 Iowa 72; Smedley v. Felt, 41 Iowa, 588; Hudson v. King Bros., 23 Ill. App. 121; Illingworth v. Burley, 33 Ill. App. 395; Hyman v. Harding, 162 Ill. 360.

If the wife, then, can purchase articles that are family expenses and yet are not necessaries at common law, and bind both husband and wife for their payment, her authority to bind the husband to this extent is as much greater under the statute than at common law, as the phrase "family expenses," is broader than "necessaries." That she can bind the husband for "family expenses" under the statute we think is clear. It is said in Frost v. Parker, 65 Iowa, 178, "The right declared is, that the creditor of the husband or wife for family expenses may have a remedy against both." Cited in Myers v. Field, 146 Ill. 56. In Hoyle v. Warfield, 28 Ill. App. 629, it is said, "Under the provisions of this section we think it makes no difference to which of the parties the credit is given; they are both liable." (Arnold v. Keil, 81 Ill. App. 242.)

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the joint liability of husband and wife for such expenses, is not synonymous with the term "necessaries." Hyman v. Harding, 162 Ill. 362.

Comfort, Convenience and Welfare.

An instruction including as family expenses "all expenses for the comfort, convenience and welfare of the family," is too broad, since it might include expenses incurred in connection with the carrying on of business by the head of welfare of the family," articles of ornam home, as well as by individual me ing, 162 Ill. 360.

the family. Von Platen v. Krueger, 11 Ill. App. 630, 631.

Situation in Life as Affecting.

An instruction limiting family expenses to such as are suitable and proper for the family considering their condition imposes an unwarranted limitation. Von Platen v. Krueger, 11 Ill. App. 630.

Goods Purchased for Personal Use.

Goods purchased by the husband for his personal use may be "family expenses" for which the wife may be held liable, although not necessaries and not purchased with her consent. Hudson v. King Brothers, 23 Ill. App. 122.

What Included.

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the joint liability of husband and wife for such expenses, embraces merely the legitimate expenses of the family, as such, and actually used or kept for use therein. Hyman v. Harding, 162 Ill. 360. To the same effect see Featherstone v. Chapin, 93 Ill. App. 226.

The "expenses of the family," which are made a charge on the property of both husband and wife by section 15 of the Husband and Wife Act (J. & A. ¶ 6152), are expenses for something used in the family, or kept for use or which have been beneficial thereto. Featherstone v. Chapin, 93 Ill. App. 226.

Articles Purchased for Individual Members of Family.

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the joint liability of husband and wife for such expenses, may include articles purchased for and used by one member only, if conducing substantially to the welfare of the family in general, such as musical instruments, books, pictures, and articles of ornament used to beautify the home, as well as clothing used exclusively by individual members. Hyman v. Harding, 162 Ill. 360.

Business Expenses.

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the joint liability of husband and wife for such expenses, does not include business expenses incurred merely to secure means for maintaining the family, private or individual expenses not affecting the family, such as a ring. Hyman v. Harding, 162 Ill. 360.

Separation as Affecting.

To come within the statute as to "family expenses" there must be a family in fact, hence wearing apparel purchased by the wife months after her separation from her husband is not a "family expense," although the seller had no notice of the separation. Schlesinger & Mayer v. Keifer, 30 Ill. App. 257.

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the liability of the property of husband and wife for such expenses, does not include the expense of caring for the husband when in fits of drunkenness, and while separated from the wife as a result of such drunkenness. Featherstone v. Chapin, 93 Ill. App. 226.

Purchase in Contemplation of Separation.

Expenses incurred on account of goods purchased by the wife in contemplation of separation from her husband, and for the personal use of the wife are not "expenses of the family." Hudson v. Sholem & Sons, 65 Ill. App. 64.

Education of Stepson.

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶6152), making the property of both husband and wife liable for such expenses, includes the expense of the education of a stepson whom a man has taken into his family on his marriage with the boy's mother, the statute not changing the stepfather's common law liability. Chicago, etc., Ass'n v. Scott, 159 Ill. App. 355.

Utility or Ornament.

The liability of a husband for an article of wearing apparel bought by his wife, for her own personal use, does not depend upon whether such article is alone useful, or whether with utility is combined ornament or adornment, hence a lace waist may constitute a family expense. Ross v. Johnson, 125 Ill. App. 66.

Wife's Medical Attendance.

The expression "expenses of the family," used in section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the joint liability of the property of husband and wife for such expenses, includes the cost of medical services rendered to the wife. Lifschitz v. Chicago, 194 Ill. App. 489.

Medical Services Rendered Husband.

Medical services rendered to the husband during his last illness constitute family expenses. Cole v. Bentley, 26 Ill. App. 262.

EXPERIENCE.

Knowledge derived from proof furnished by one's own faculties or senses. Vickers J. dissenting opinion Lake Erie & W. R. Co. v. Klinkrath, 227 Ill. 444.

EXPERIMENTS.

If the conditions are similar when the experiment is made with those existing at the time the fact sought to be illustrated occurred the result of the experiment could have a bearing on the issue and be admissible. MacNeil's Ill. Evidence 506.

EXPERT.

One instructed by experience. Linn v. Sigsbee, 67 Ill. 81; North Kankakee S. Ry. Co. v. Blatchford, 81 Ill. App. 611.

Lord Mansfield, in Folkes v. Chadd, 3 Doug. 157, calls experts "men of science." Linn v. Sigsbee, 67 Ill. 81.

Witnesses possessing peculiar skill and knowledge upon the subject matter upon which they are called to testify. Geohegan v. Union E. R. Co., 266 Ill. 488. Persons competent to testify on particular subjects, and possessed of certain facts in relation to their specialty not known by ordinary persons are frequently designated as experts. Geohegan v. Union E. R. Co., 266 Ill. 489.

To become an expert requires a course of previous habit and practice, or of study, so as to be familiar with the subject. North Kankakee S. Ry. Co. v. Blatchford, 81 Ill. App. 611.

Knowledge of values of property does not depend on professional or other special skill or training as would entitle witnesses to be called "experts," as that term is generally understood, but may be classed as such in the application of the rule as to the limitation of expert witnesses. Geohegan v. Union E. R. Co., 266 Ill. 489.

Experts may give opinions upon questions of science, skill or trade, as, to the sea-worthiness of ships, or their unskillful navigation, the genuineness of handwriting, the cause of disease and of death, the consequences of wounds, the sanity or insanity of a person's mind, or others of a like kind. Linn v. Sigsbee, 67 Ill. 81.

A skillful or experienced person; a person having skill, experience or peculiar knowledge on certain subjects or in certain professions; a scientific witness. Heald v. Thing, 45 Maine 394.

One who has made the subject upon which he gives his opinion a matter of particular study, practice, or observation, and he must have a particular and special knowledge on the subject. Dole v. Johnson, 50 N. Hamp. 454.

Derived from the Latin experti, which signifies instructed by experience, and are defined as persons selected by the courts or the parties in a cause, on account of their knowledge or skill, to examine, estimate, and ascertain things, and make report of their opinions. Travis v. Brown, 43 Penn. St. 12.

EXPERT TESTIMONY.

It is not error to instruct a jury, with reference to expert witnesses, that "expert testimony is the opinion of such a witness based on the facts of the case as shown by the evidence." Schubert v. Schubert, 168 Ill. App. 427.

EXPIRATION.

To emit the last breath; to perish; to cease; to come to an end; to conclude; to terminate. Stuart v. Hamilton, 66 Ill. 255.

The term "expiration," used in section 2 of the Landlord and Tenant Act (J. & A. ¶7040), relating to the recovery of double rent where tenants wilfully hold over after notice and demand for possession, refers to cases where the term has expired by efflux of time, and does not include cases where the landlord has enforced a forfeiture of the lease and brought the term to an end before the end of the period provided by the lease. Stuart v. Hamilton, 66 Ill. 255.

EXPLODE.

To decompose or change in a violent manner so as to generate force. Cada v. The Fair, 187 Ill. App. 117.

EXPLOSION.

A discharge; an outburst. Helmbacher, etc., Co. v. Garrett, 119 Ill. App. 168.

May be described generally, as a sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. United Life, etc., Ins. Co. v. Foote, 22 Ohio St. 348.

A boiler is said to explode when the failure is accompanied by an extraordinary development of elastic force, the boiler being rent and torn asunder at strong places and weak places frequently without distinction. Evans v. Columbia Ins. Co., 44 N. Y. 151.

EXPLOSION OF ANY KIND.

A policy exempting a fire insurance company from any loss caused by the explosion of gunpowder, camphene, or any explosive substance, or "explosion of any kind" does not exempt the insurer from loss due to a fire which was caused by

such an explosion. Commercial, etc., Co. v. Robinson, 64 Ill. 269.

A clause in a policy of insurance against loss by fire, that the company shall not be liable for any loss caused by "explosion of any kind," unless fire ensues, contemplates the existence of more than one kind of explosion, and is broad enough to include an explosion produced by the ignition and combustion of the agent of explosion as well as an explosion without combustion. Heuer v. North Western, etc., Co., 144 Ill. 397.

EXPLOSIVE SUBSTANCE.

The expression "explosive substance," used in an ordinance forbidding the sale of toy fire arms in which such substance may be used, includes compressed air where used as the propellant for such a fire arm. Cada v. The Fair, 187 Ill. App. 117.

EXPLOSIVES.

A general term for substances which by certain treatment explode. Cada v. The Fair, 187 Ill. App. 117.

Classification.

Explosives are divided into two classes, propellants and detonators. 187 Ill. App. 117.

EXPOSED FOR SALE.

The words "exposed for sale" in a statute providing that where a certain article is exposed for sale by retail a label of the prescribed size and marked in the prescribed manner shall be attached thereto does not exclude that article when wrapped in paper parcels so that the article itself is invisible to the purchaser. (It would, however, exclude it if it were packed away in a cellar so that neither the article nor its wrapper is visible, nor any indication of its presence.) Wheat v. Brown (1892), 1 Q. B. 418. Crane v. Lawrence, 25 Q. B. D. 152 cited.

A lump of butter and margarine kept on a shelf in a refreshment-room for the purpose of having pieces cut from it from time to time in order to be eaten on the premises with other food is not "exposed for sale by retail" within the meaning of a statute providing that margarine so exposed shall be marked and labelled in a specified manner. Moore v. Pearce's, etc., Refreshment Rooms, Ltd. (1895), 2 Q. B. 657.

Meat deposited with a salesman is not ipso facto "exposed for sale" within the meaning of a statute imposing penalties on the owner of unsound meat so exposed. Barlow v. Terrett (1891), 2 Q. B. 107.

"I think the words 'exposed for sale'" [within the meaning of a statute providing that if a certain article (margarine) be so exposed by retail each parcel thereof so exposed shall have a label attached] "mean exposed to view in the shop in the sight of the purchaser." A. L. Smith, C. J. in Crane v. Lawrence, 25 Q. B. D. 155.

EXPOSURE TO OBVIOUS RISK.

It is sometimes said, and many cases have been decided apparently on that ground, that the policy is intended to insure a man against his own carelessness or thoughtlessness, as against any other danger. An instructive case upon this point in Cornish v. Accident Ins. Co., 23 Q. B. D. 453. In that case the policy excepted accidents happening "by exposure of the insured to obvious risk of injury." The insured was killed in attempting in broad daylight to cross the main line of a railway, at a place other than a crossing, in front of an approaching train. The judge was of opinion that the case fell within the exception, and so instructed the jury, who, reciting that they were compelled by the ruling of the judge, found that the insured lost his life by incurring obvious risk, but stated also, as a part of their finding, that they were of opinion that "it was an ordinary misadventure." The court held that the case came within the exception. Lindley, L. J., in delivering the judgment of the "We accept the view of court, saying: the jury that this accident may be called an ordinary misadventure, but the question is whether the policy covers it. We

think not. We are not prepared to say that injuries occasioned by the negligence of the insured are in all cases excepted. Such a construction would render the policy little better than a snare to the in-But there are degrees of negligence, and we are unable to read this policy as protecting a man against the consequences of running risks which would be obvious enough to him if he paid the slightest attention to what he was doing. In the present case the deceased did in fact expose himself to risk of imminent death; that is quite clear. If he looked and saw the train coming, the risk to which he exposed himself must have been obvious to him at the time. If the risk to which he exposed himself was not then obvious to him, that circumstance can only be accounted for on the supposition that he was not attending to what he was doing in not looking to see if the train was coming, and was near."

EXPRESS AIDER.

A doctrine of the law of pleading, that a defect in pleading is aided, if the adverse party plead over to, or answer the defective pleading, in such manner that an omission or informality thereon is expressly or impliedly supplied, or rendered formal or intelligible. Cross v. Chicago, 195 Ill. App. 89.

EXPRESS ASSUMPSIT.

At common law an express assumpsit was an undertaking made orally, by writing not under seal or by matter of record, to perform an act or to pay a sum of money to another. Highway Commissioners v. Bloomington, 253 Ill. 172.

EXPRESS CONTRACT.

A contract is express where it consists of words written or spoken, expressing an actual agreement of the parties, or when the agreement is formal and stated either verbally or in writing, and is implied when the agreement is matter of inference and deduction. Heffron v. Brown, 155 Ill. 326.

As ordinarily understood, the only difference between an express contract and an implied contract is that in the former the parties arrive at their agreement by words, either oral or written, sealed or unsealed, while in the latter their agreement is arrived at by a consideration of their acts and conduct. Highway Commissioners v. Bloomington, 253 Ill. 172. To the same effect see Heffron v. Brown, 155 Ill. 327.

EXPRESS MALICE.

Malice is express where one with a sedate and deliberate mind kills another, which formed design is evidenced by certain circumstances discovering such intention, as laying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Davison v. People, 90 Ill. 229.

"Express malice," within the meaning of the Criminal Code, is that deliberate intention to take the life of a fellow creature which is manifested by external circumstances capable of proof. Criminal Code, div. 1, § 140 (J. & A. ¶ 3755); People v. Bartley, 263 Ill. 74; Kota v. People, 136 Ill. 657.

EXPRESS NOTICE.

"Express notice embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated." Baltimore v. Whittington, 78 Md. 235.

EXPRESS TRUSTS.

Trusts which are created in express terms in the deed, writing or will. Russell v. Peyton, 4 Ill. App. 478.

One which is declared in the instrument creating it. Yokem v. Hicks, 93 Ill. App. 671.

EXPRESSED IN THE TITLE.

Test.

In determining whether the subject of act is "expressed in the title," as required

by section 13 of article 4 of the Constitution of 1870, the inquiry is as to the effect, and not the technical designation of the provisions in question, and if its tendency, in effect, is to accomplish the object expressed in the title, then it is germane to such subject, and is sufficiently expressed in the title, within the meaning of the Constitution. Larned v. Tiernan, 110 Ill. 177. To the same effect see Middleport v. Aetna, etc., Co., 82 Ill. 566; Guild v. Chicago, 82 Ill. 475; People v. Brislin, 80 Ill. 433; Erlinger v. Boneau, 51 Ill. 99; Schuyler County v. People, 25 Ill. 164; Firemen's, etc., Ass'n v. Lounsbury, 21 Ill. 515; Belleville & I. R. Co. v. Gregory, 15 Ill. 29 (the last four cases construing the same expression in section 23 of article 3 of the Constitution of 1848).

Object.

The object of the requirement of section 23 of article 3 of the Constitution of 1848 that the subjects of private and local laws shall be "expressed in the title" was not to deprive the legislature of any power necessary to enable them to make private legislation ample and abundant to accomplish its legitimate purpose, but to prevent them from covertly embracing several distinct and foreign subjects in one act. O'Leary v. Cook County, 28 Ill, 539.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" was intended to put an end to certain vicious legislation, and not to embarrass legislation by making laws unduly restrictive in their scope and operation. Christy v. Elliott, 216 Ill. 44; People v. Nelson, 133 Ill. 575.

Construction.

The requirement of section 13 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" has been uniformly construed liberally in favor of the validity of the enactment. People v. Huff, 249 Ill. 167; Riggs v. Jennings, 248 Ill. 585; People v. Sayer, 246 Ill. 384; Manchester v. People, 178 Ill. 291; Hudnall v. Ham, 172 Ill. 82;

Ritchie v. People, 155 Ill. 120; Larned v. Tiernan, 110 Ill. 177; Blake v. People, 109 Ill. 509; Belleville & I. R. Co. v. Gregory, 15 Ill. 29 (construing the same expression used in section 23 of article 3 of the Constitution of 1848). The construction given must not be hypercritical (Hudnall v. Ham, 172 Ill. 82; Ritchie v. People, 155 Ill. 121), but reasonable, and must be one which will repress the evil intended to be guarded against, and which at the same time will not render it oppressive or impracticable. ville & I. R. Co. v. Gregory, 15 Ill. 29 (construing the same expression used in section 23 of article 4 of the Constitution of 1848). Every presumption must be indulged in favor of its validity. People v. Nelson, 133 Ill. 575. If there is doubt whether the requirement of the Constitution is complied with, it must be solved in favor of the validity of the act. Boehm v. Hertz, 182 Ill. 157; Bobel v. People, 173 Ill. 25; Ritchie v. People, 155 Ill. 120; People v. Nelson, 133 Ill. 575; People v. Hazelwood, 116 Ill. 328; Middleport v. Aetna, etc., Co., 82 Ill. 566.

Expression of General Purpose.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" is satisfied where a general purpose is declared therein, the means by which to accomplish such purpose being presumed to be intended as necessary incidents. People v. Huff, 249 Ill. 167; People v. Hazelwood, 116 Ill. 327.

Relation of Means to Object Indicated.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subject of acts shall be "expressed in the title" is satisfied if the means included in the act are reasonably adapted to secure the object indicated in the title. People v. Huff, 249 Ill. 167; Manchester v. People, 178 Ill. 291; People v. Nelson, 133 Ill. 589; Larned v. Tiernan, 110 Ill. 177.

Unnecessary Particularity as to Purposes and Means.

The subject of an act is "expressed in the title," within the meaning of section 13 of article 4 of the Constitution of 1870, although the title specifies with unnecessary particularity the motives or purposes in aid of which it is enacted, and to some extent recites the means by which the object of the act is to be accomplished. Blake v. People, 109 Ill. 509.

An act containing many provisions and details for the accomplishment of a legislative purpose is not obnoxious to the requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title," if such provisions legitimately tend to effectuate the object expressed in the title. People v. Huff, 249 Ill. 167; Riggs v. Jennings, 248 Ill. 585 (where the act created the Municipal Court of Chicago, including its creation, organization, jurisdiction and procedure); People v. Sayer, 246 Ill. 385; People v. Mc-Bride, 234 Ill. 167; Manchester v. People, 178 Ill. 291. To the same effect see Meul v. People, 198 Ill. 261.

Consistency.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" is not violated although the title refers affirmatively to what is stated negatively in the body of the act, as where the title of an act stated what should be a defense in certain cases, while the body of the act provided that certain things should not be a defense in such cases. People v. Braun, 246 Ill. 431.

General Subject Covering Subordinate Branches.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" is complied with if the title is comprehensive enough to reasonably include, as falling within the general subject and as subordinate branches thereof, the several objects which the statute assumes to affect. Manchester v. People, 178 Ill. 291; People v. Blue Mountain Joe, 129 Ill. 377; Donnersberger v. Prendergast, 128 Ill. 233; People v. Hazelwood, 116 Ill. 327; Potwin v. Johnson, 108 Ill. 78.

Relation of Subject to Title.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" is satisfied if by any fair intendment the provisions in the body of the act have a necessary and proper connection with the title. People v. Huff, 249 Ill. 167. To the same effect see Morrison v. People, 196 Ill. 461; In re St. Louis, etc., Co., 194 Ill. 613; Bailey v. People, 190 Ill. 38.

Section 13 of article 4 of the Constitution of 1870, requiring that the subjects of acts shall be "expressed in the title" is complied with if all the provisions of the act relate to one subject indicated in the title, and are parts of it, incident to it or reasonably connected with or auxiliary to it. People v. O'Brien, 273 Ill. 486; People v. Huff, 249 Ill. 167; Riggs v. Jennings, 248 Ill. 585; People v. Sayer, 246 Ill. 385; People v. Braun, 246 Ill. 431; Boehm v. Hertz, 182 Ill. 157; Bobel v. People, 173 Ill. 25; Hudnall v. Ham, 172 Ill. 83; Ritchie v. People, 155 Ill. 121.

Section 13 of article 4 of the Constitution of 1870, relating to the form of bills, requiring that the subject of an act be "expressed in its title," requires that a general expression of the subject of the act in the title be specific enough to accomplish the particular purpose for which the subject is required to be expressed in the title. Milne v. People, 224 Ill. 128.

Incongruity of Subject.

To render an act void for the reason that a provision in its body is not "expressed in its title," as required by section 13 of article 4 of the Constitution of 1870, such provision must be incongruous with the title, or must have no proper connection with or relation to the title. People v. Huff, 249 Ill. 167; People v. Sayer, 246 Ill. 385; Hudnall v. Ham, 172 Ill. 83.

Necessity of Stating Consequences or Effect.

Section 13 of article 4 of the Constitution of 1870, providing that the subjects of acts shall be "expressed in the title," does not require that all the legal effects of an act, such as repeal by implication, shall be expressly stated in the title, which would be impracticable, but where the act itself is clearly embraced in the title, all legal consequences necessarily flowing from it will be regarded as embraced within the title, within the meaning of the Constitution. Mix v. Illinois C. R. Co., 116 Ill. 508. To the same effect see Timm v. Harrison, 109 Ill. 597.

Necessity for Exactness.

Section 13 of article 4 of the Constitution of 1870, requiring that the subjects of acts shall be "expressed in the title" does not require that the title of an act shall specifically and exactly express the subject of an act or be an index of its details. People v. O'Brien, 273 Ill. 486; People v. Braum, 246 Ill. 431; Milne v. People, 224 Ill. 128; Boehm v. Hertz, 182 Ill. 157; Bobel v. People, 173 Ill. 25; Ritchie v. People, 155 Ill. 120; People v. Hazelwood, 116 Ill. 327; Johnson v. People, 83 Ill. 436.

Sufficiency to Apprise Public of Subject Matter.

The subject of an act is "expressed in its title," within the meaning of section 13 of article 4 of the Constitution of 1870, relating to the form of bills, if the title be so framed and worded as fairly to apprise the legislators and the public in general of the subject matter of the legislation, so as to reasonably lead to an inquiry into the body of the bill, the requirement being that the act and its title must correspond, and such correspondence is to be determined in view of the subject matter to which the legislation relates. Milne v. People, 224 Ill. 128. To the same effect see Manchester v. People, 178 Ill. 291; Timm v. Harrison. 109 Ill. 597; Abington v. Cabeen, 106 III. 207.

Law Having But One General Object.

The requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title" is accomplished where a law has but one general object, which is fairly

indicated by its title, for to require every end and means necessary or convenient for the accomplishment of this general object to be provided for a separate act relating to that alone would not only be unreasonable, but would actually render legislation impossible. Lang v. Friesenecker, 213 Ill. 605; Arms v. Ayer, 192 Ill. 613; Fuller v. People, 92 Ill. 185.

Expressions Calling Attention to Subject of Bill.

The subject of an act is "expressed in the title," within the meaning of section 13 of article 4 of the Constitution of 1870, if any expression in the title calls attention to the subject of the bill, although in general terms. Milne v. People, 224 Ill. 128; Johnson v. People, 83 Ill. 436. To the same effect see Manchester v. People, 178 Ill. 291; People v. Nelson, 133 Ill. 575; People v. Blue Mountain Joe, 129 Ill. 376; Donnersberger v. Prendergast, 128 Ill. 233; Mix v. Illinois C. R. Co., 116 Ill. 508.

Repealing Sections.

The subject of an act is "expressed in the title," within the meaning of section 13 of article 4 of the Constitution of 1870, although the act contains a section repealing a former act, which section is not referred to in the title. Timm v. Harrison, 109 Ill. 597; Burke v. Monroe County, 77 Ill. 614.

Generality of Title.

The generality of the title of act does not make it obnoxious to the requirement of section 13 of article 4 of the Constitution of 1870 that the subjects of acts shall be "expressed in the title," so long as it is not made to cover legislation incongruous in itself, and which, by no fair intendment, can be considered as having a necessary or proper connection. Hudnall v. Ham, 172 Ill. 83; People v. Nelson, 133 Ill. 575. To the same effect see Fuller v. People, 92 Ill. 186; People v. Wright, 70 Ill. 396; Neifing v. Pontiac, 56 Ill. 175.

Relations of Provisions to Object.

In order that the subject of an act shall be "expressed in the title," within the meaning of section 13 of article 4 of the Constitution of 1870, all the sections in the bill must be germane to its primary object. Burke v. Monroe County, 77 Ill. 613; Erlinger v. Boneau, 51 Ill. 99 (construing the same expression used in section 23 of article 3 of the Constitution of 1848).

EXPRESSIO UNIUS EXCLUSIO ALTERIUS.

The expression of one thing is the exclusion of another. Co. Litt. 210; Broom. Max. 607, 651; 3 Bingh. N. C. 85; 8 Scott N. R. 1013; 12 M. & W. 761; 16 M. & W. 244; 2 Curl. C. C. 365; 6 Mass. 84; 11 Cush. 328; 98 Mass. 29; 117 Mass. 448; 3 Johns. Ch. 110; 5 Watts. 156; 59 Pa. 178; 84 Ala. 289; 11 Colo. 265; 56 Fed. Rep. 880; 74 Fed. Rep. 535; 104 U. S. 25; 4 Biss. 35.

That which is implied and is general is restricted by that which is expressed and is particular and specific. Jele v. Lemberger, 163 Ill. 343.

"The maxim 'expressio unius, exclusio alterius,' has been pressed upon us.

* * It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice." Colgnhoun v. Brooks, 21 Q. B. D. 65.

EXTEND.

The power vested in cities and towns by paragraph 89 of section 1 of article 5 of the Cities and Villages Act (J. & A. ¶ 1334) to "extend" streets over railroad tracks contemplated that the land taken by the city for such extension shall be subject to the joint use by the railroad in the exercise of its franchise, and by the public as a street, so that the statute provides for the acquirement by the city of an easement merely and not any title to the fee of the land taken for the extension. Illinois C. R. Co. v. Chi-

cago, 141 Ill. 595; Illinois C. R. Co. v. Chicago, 138 Ill. 460.

EXTEND TO AND INCLUDE.

The words "shall extend to and include" (and so of the word "include" alone) in an interpretation clause, are wider and go further than the words "shall mean"; and denote that, in addition to the popular meaning given to a word or phrase, such word or phrase shall also have the meanings given to it by the interpretation clause. Per Baggallay, L. J. and Brett, M. R., Portsmouth v. Smith, 53 L. J. Q. B. 92; 13 Q. B. D. 184; Va. R. v. Elliott, 41 L. J. Adm. 67; nom. Dyke v. Elliott, L. R. 4 P. C. 184.

Extension.

The word "extension" imports the continuance of an existing thing, and must have its full effect given to it where it occurs. Brooke v. Clarke, 1 B. & A. 403.

EXTENT OF ASSETS DESCENDED.

The rule of the common law that where the ancestor bound the heir to the payment of a debt by express declaration in a specialty, the heir was bound to the "extent of assets descended," means, by the quoted expression, to the extent of the real estate coming from the ancestor to the heir by inheritance, the word "assets" always meaning real estate in this connection. People v. Brooks, 123 Ill. 248.

EXTERNAL.

An injury consisting of a dislocation of the internal cartilage of the knee joint is to be regarded as external, within the meaning of that word in a policy of insurance which excepts injuries arising from "natural disease or weakness," the assured not having previously suffered from weakness of the knee. The word is to be taken as the antithesis of "internal." Hamlyn v. Crown, Sr., Ins. Co. (1893), 1 Q. B. 750.

EXTERNAL AND VISIBLE MARKS.

"The language employed (in an insurance policy that excepts 'death or disablement from accidents that shall bear no external and visible marks' indicates that its purpose was to provide that a case of death or injury should not be regarded as within the policy, unless there were some external or visible evidence, which indicated that it was accidental." Menneiley v. Employers' Liability Assurance Co., 148 N. Y. 602.

EXTERNAL PARTS.

A covenant to repair the "external parts" of a house includes a wall by which it adjoins to, and is divided from, another house,—the "external parts" of premises being those which form the enclosure of them and beyond which no part of them extends. Green v. Eales, 2 Q. B. 225; 11 L. J. Q. B. 63; 1 G. & D. 468.

EXTERNAL, VIOLENT AND ACCIDENTAL MEANS.

The expression "external, violent, and accidental means," used in a policy of accident insurance as descriptive of the cause of the accidents intended to be insured against, does not include a case where a practicing physician and surgeon deliberately and voluntarily makes an assault upon a powerful man with intent to bring on a fist fight, although in the fight insured is knocked down and in some way breaks a leg, which is the injury sought to be recovered for, insured being bound to anticipate that he might not succeed by a single blow in making the assaulted one incapable of resistance, as insured stated his intention to have been, and that insured might be injured. in which case it is immaterial that the injury was of a nature which was not and could not be anticipated. Hutton v. States, etc., Co., 267 Ill. 270.

A death due to an overdose of morphine or other poison taken without intent to cause death is caused by "external, violent and accidental means," within the meaning of a policy of accident insurance. Healey v. Mutual, etc.,

Ass'n, 133 Ill. 563; Pixley v. Illinois, etc., Ass'n, 195 Ill. App. 138.

One who comes to his death by drowning suffers death by external, violent and accidental means. Sturm v. Employers' Liability Assurance Corporation, Ltd., 212 Ill. App. ——.

The accidental lodging of a piece of meat in the wind-pipe is external, violent, and accidental within the meaning of the phrase. American Accident Co. v. Reigart, 94 Ky. 547.

EXTRA CONDUCTOR.

"The term 'extra conductor' is more comprehensive than that of brakeman;

* * the former includes within the designation such persons as may be engaged as brakemen, whereas the latter does not include the former; in other words, all extra conductors are in a certain sense brakemen, but all brakemen are not extra conductors." Standard Life, etc., Ins. Co. v. Koen, 11 Tex. Civ. Ap. 279.

Extra Services.

Extra services of officers be services incident to their offices for which compensation is not provided by law. Board of Commissioners v. Blake, 21 Ind. 34.

EXTRAORDINARY CONTEMPT.

Abusive or scandalous words respecting the court. People v. Wilson, 64 Ill. 225.

Blackstone's Definition.

Contempts committed either in the face of the court, or by speaking or writing contemptuously of the court or judges acting in their judicial capacity. People v. Wilson, 64 Ill. 225.

EXTRAORDINARY FLOODS.

Freshets not occurring annually. Illinois C. R. Co. v. Bethel, 11 Ill. App. 23. It is error to instruct the jury that floods occurring twice within five years are not in law extraordinary floods relieving from liability persons negligently

contributing to such overflows, it being a question of fact for the jury on all the evidence what facts will constitute such a flood. Ohio & M. Ry. Co. v. Thillman, 143 Ill. 137.

EXTRAORDINARY RAINS.

Rains such as do not occur nor are reasonably to be expected annually. Meister v. Lang, 28 Ill. App. 625.

The principle, clearly, is, that although a rainfall may be more than ordinary, yet if it be such as has occasionally occurred, and, it may be (at irregular intervals, it is to be forseen that it will occur again, and it is the duty of those changing or restraining the flow of water to provide against the consequences that will result from it. It is within the knowledge of all who have long resided in this State, that out streams are occasionally subject, after intervals which are sometimes of shorter and at other times of longer duration, to great floods, occasioned by very heavy rainfalls, and their heights are known by those who have felt interested in them. Such rainfalls were not usual and ordinary, but they were unusual and beyond ordinary,-i. e., they were extraordinary; and yet it is just as certain that like rainfalls will occur in the future as it is that the same laws of nature by which they are produced, and the same conditions to be affected by those laws, will continue to exist in the future as they have in the past. Though of rare occurrences, such rainfalls are not phenomenal, and therefore beyond reasonable anticipation, and it is hence but the prudence that a discreet man would exercise in his own affairs to provide against injury from them. O. & M. Ry. Co. v. Ramey, 139 Ill. 13.

EXTRAVAGANTES.

L. Lat. In the canon law. The title of the papal constitutions and decretal epistles of Pope John XXII and his successors; being one of the divisions of the Decretales, or second part of the Corpus Juris Canonici.

So called, because at first they were not digested or embodied with the

other papal constitutions, but remained out of (extra) the body of the canon law, as though wandering or straying (vagantes) by themselves. Ducange. 1 Bl. Com. 82. They are generally called, in English, Extravagants, and are of two kinds; the Extravagantes Joannis XXII or those published by John himself, consisting of twenty decretals, and the Extravagantes Communes, of those published by his successors, being divided into five books. 1 Mackeld. Civ. Law, 82, 83, note. Hallifax, Anal. b, ch. 1, note. See Butler's Hor. Jur. 116.

EXTREME AND REPEATED CRUELTY.

Definition.

It is difficult to define precisely the meaning of the expression "extreme and repeated cruelty," used in section 1 of the Divorce Act (J. & A. ¶ 4215), but it may be said generally that it is any wilful misconduct which endangers the life or health of the wife, and exposes her to bodily hazard and intolerable hardship, and renders cohabitation unsafe. Fritz v. Fritz, 138 Ill. 445; Ward v. Ward, 103 Ill. 483. To the same effect see Coursey v. Coursey, 60 Ill. 190; Turbitt v. Turbitt, 21 Ill. 439; Maddox v. Maddox, 91 Ill. App. 152.

What Constitutes.

One act of cruelty does not constitute "extreme and repeated cruelty," within the meaning of the Divorce Act (J. & A. ¶ 4215), (Fizette v. Fizette, 146 Ill. 336; Hitchins v. Hitchins, 140 Ill. 829; Fritz v. Fritz, 138 Ill. 448; Sharp v. Sharp, 116 Ill. 512; De La Hay v. De La Hay, 21 Ill. 255; Harman v. Harman, 16 Ill. 91; Sharp v. Sharp, 16 Ill. App. 349), although aggravated, (Fizette v. Fizette, 146 Ill. 336; Sharp v. Sharp, 16 Ill. App. 349), or coupled with unkind treatment (Fritz v. Fritz, 138 Ill. 443), or abusive or derogatory language. Fritz v. Fritz, 138 Ill. 443; Harman v. Harman, 16 Ill. 91. Nor is it material how wanton or serious was such single act of cruelty, or whether it was attended with such circumstances of malignity and aggravation as to create the most reasonable apprehensions of further bodily harm to the other, and therefore to render the party physically or mentally incapable of properly discharging the marriage duties, unless it appear that there was a malicious intent to take life. Sharp v. Sharp, 16 Ill. App. 349.

The "extreme and repeated cruelty" which section 1 of the Divorce Act (J. & A. ¶ 4215) provides shall be a cause for divorce is of a more aggravated character than "cruelty" at common law. Harman v. Harman, 16 Ill. 90.

To constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act of 1845, it is not enough that the parties do not live happily together, or that threats of personal violence may have been used, and abusive language and approbrious epithets, originating in a groundless jealousy. Vignos v. Vignos, 15 Ill. 187.

Provocation or Aggravation.

Physical violence to a wife, provoked by her misconduct or insults is not sufficient to constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act of 1845, unless the violence is out of all proportion to the provocation. Von Glahn v. Von Glahn, 46 Ill. 140. To the same effect see Garrett v. Garrett, 252 Ill. 323.

Acts of physical violence inflicted by a husband on his wife is not the less "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215), because the wife is a shrew and a course minded woman, and applies opprobrious and insulting epithets to him. Wessels v. Wessels, 28 Ill. App. 257.

Necessity for Bodily Harm.

To constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215) there must be bodily harm, in contradistinction to mere harsh or even opprobrious language or even mental suffering—the cruelty must be grave and endanger life and limb, or at any rate subject the person to danger of great bodily

harm. Fizette v. Fizette, 146 Ill. 334; Fritz v. Fritz, 138 Ill. 444; Henderson v. Henderson, 88 Ill. 250; Ratts v. Ratts, 11 Ill. App. 367.

Physical Violence.

To constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶4215), there must be acts of physical violence. Maddox v. Maddox, 189 III. 153; Fisette v. Fizette, 146 III. 335; Sharp v. Sharp, 116 III. 512; Maddox v. Maddox, 91 III. App. 152.

Temper or Mannerisms.

Mere austerity of temper, petulance of manners, a want of civil attentions, occasional sallies of passion, denials of little indulgencies and particular accommodations which do not threaten bodily harm, do not constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215). Maddox v. Maddox, 189 Ill. 154; Fizette v. Fizette, 146 Ill. 335; Harman v. Harman, 16 Ill. 90. To the same effect see Turbitt v. Turbitt, 21 Ill. 438.

Number of Acts.

Two distinct acts of physical violence on the person of the wife is technically "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act, although no great physical injury was done to the wife, where the acts were done in the presence of strangers, accompanied by coarse language implying a want of chastity. Farnham v. Farnham, 73 Ill. 499. To the same effect see Ward v. Ward, 103 Ill. 482.

Condonation and Repetition.

Where an act of cruelty has been condoned by a wife by continuing to cohabit after the commission of the offense, a subsequent repetition of the offense is regarded as reviving the former, and proof of both, in connection with proof of harsh and unkind treatment, will constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4125). Sharp v. Sharp, 116 Ill. 517.

Intervening Conduct.

It is the constantly occurring events in the lives of both parties prior to the first act of violence, intervening both acts, and subsequent to the last one—many of them of little moment if unconnected with other things, and others serious in their nature—all considered together, which constitute the body of what section 1 of the Divorce Act (J. & A. ¶ 4125) defines as "extreme and repeated cruelty." Sharp v. Sharp, 116 Ill. 512.

Acts During Delirium.

Where a husband is addicted to the use of morphine and the wife attempts to prevent him from administering it to himself hypodermically, violence committed on the wife at such times cannot be said to constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215), since the wife must be deemed to have known and contemplated the probable results of her action, and voluntarily encountered the violence, especially where the husband was in a state of total or partial delirium due to the use of the drug. Youngs v. Youngs, 130 Ill. 236.

Resistance to Ill Treatment.

Resistance to ill treatment is not extreme and repeated cruelty within the meaning of section 1 of the Divorce Act (J. & A. ¶4215). Garrett v. Garrett, 252 Ill. 327.

Abusive Language.

Mere angry or abusive words, menaces or indignities do not constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215). Fizette v. Fizette, 146 Ill. 335; Embree v. Embree, 53 Ill. 395.

Threats.

Although threats of violence and charges of adultery are competent evidence to prove adultery, the threats must be such as to raise a reasonable apprehension of bodily hurt, and must be accompanied or followed by acts of actual

malicious violence, and must serve to magnify the atrocity of such acts. Fritz v. Fritz, 138 Ill. 444; Sharp v. Sharp, 116 Ill. 512; Ward v. Ward, 103 Ill. 483. To the same effect see Coursey v. Coursey, 60 Ill. 190.

To constitute "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215), there must be acts or threats which raise a reasonable apprehension of bodily hurt; the causes must be grave and weighty, and show a personal danger incompatible with the duties of married life. Maddox v. Maddox, 189 Ill. 153; Fizette v. Fizette, 146 Ill. 335; Harman v. Harman, 16 Ill. 90.

Cruelty by Wife.

Only on a clear case will a divorce be granted to a husband for the "extreme and repeated cruelty" of a wife, within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215). Garrett v. Garrett, 252 Ill. 322; Duberstein v. Duberstein, 171 Ill. 139; Aurand v. Aurand, 157 Ill. 323; De La Hay v. De Lay Hay, 21 Ill. 253.

Slight acts of violence by a wife to a husband do not constitute "extreme and repeated cruelty" within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215). De Lay Hay v. De Lay Hay, 21 Ill. 253.

In order to show "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215), where the suit is brought by the husband, it is not sufficient to show slight acts of violence on her part toward him, so long as there is no reason to suppose that he will not be able to protect himself by the exercise of his marital powers. Garrett v. Garrett, 252 Ill. 322; Duberstein v. Duberstein, 171 Ill. 139; Aurand v. Aurand, 157 Ill. 323; Hitchins v. Hitchins, 140 Ill. 329; Fritz v. Fritz, 138 Ill. 445.

While the general principles are the same whether a suit for divorce on the ground of "extreme and repeated cruelty," as provided by section 1 of the Divorce Act (J. & A. ¶ 4215), be instituted by the husband or by the wife, yet in the

application of these principles it is necessary to consider the relative rights which the marriage has created, the physical constitutions and temperaments of the parties. Garrett v. Garrett, 252 Ill. 322; De La Hay v. De La Hay, 21 Ill. 253.

In order that the acts of a wife may be held to be "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act J. & A. ¶ 4215), the husband must show such a course of bad conduct by the wife that it is unsafe for him to cohabit with her. Aurand v. Aurand, 157 Ill. 323; De La Hay v. De La Hay, 21 Ill. 253.

Question of Fact.

The question what constitutes "extreme and repeated cruelty," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215), is a question of fact depending on the circumstances of each case. Maddox v. Maddox, 189 Ill. 153; Ward v. Ward, 103 Ill. 483; Maddox v. Maddox, 91 Ill. App. 152.

EXTREME TECHNICALITY.

In a prosecution for counterfeiting a trade mark, where the trademark counterfeited was owned by a partnership, and where the indictment alleged that the name of one of the partners was "Matt Von Guaita," while there was some evidence that such partner's given name was "Max," it is error to instruct the jury that the names were idem sonans, where the instruction is coupled with another that the law does not favor "extreme technicality" in the proof of names the sound of which is very similar, since the instruction might mislead the jury and induce them to disregard the difference between the names "Matt" and "Max," in case the jury had, from the evidence, any reasonable doubt which of the names was in fact that of the partners in question, the term "extreme technicality" having no fixed and definite meaning. Vincendeau v. People, 219 Ill. 484.

F. O. B.

See also Free on Board.
A contract to deliver coal "f. o. b. mines," although imposing on the vendor

the duty to deliver the coal on board the cars at the mines without charge to the vendee other than the purchase price, does not fix upon either party the duty to furnish the cars, and parol evidence is competent showing the construction placed on the contract by the parties, and it is proper for the court to give the contract such construction as the evidence shows that the parties placed upon it. Consolidated, etc., Co. v. Jones, etc., Co., 232 Ill. 328; Harman v. Washington, etc., Co., 228 Ill. 304. To the same effect see Consolidated, etc., Co. v. Schneider, 163 Ill. 397 (where the expression was "f. o. b. cars at said mine").

FACE.

The "face" of a curb line is the side of the stone next to the street. Job v. People, 193 Ill. 611.

FACE TO FACE.

Section 9 of article 2 of the Constitution of 1870, providing that in a criminal prosecution the accused shall have the right, inter alia, to meet the witnesses "face to face," does not preclude the introduction of record evidence, such as a book containing records of marriages, which may, in a criminal trial, become necessary to establish some material face, to secure a conviction. Tucker v. People, 122 Ill, 593.

FACTOR.

One who sells for the profit of his principal, having no interest in the transactions except his commissions. Dickey J. Dissenting opinion Gray v. Agnew, 95 Ill. 327.

One who sells property of others when he has its possession. Braun v. Chicago, 110 Ill. 195. Cutler v. Pardridge, 182 Ill. App. 357.

One who, having the goods in his own possession, sells them usually in his own name and without disclosing that of his principal. Cassidy, etc., Co. v. Elk, etc., Co., 58 Ill. App. 41.

An agent employed to sell goods or

merchandise, consigned or delivered to him by or for his principal, for a compensation, usually called factorage or commission; the agent, for the sale of goods or merchandize for his principal, for compensation or a commission. Winne v. Hammond, 37 Ill. 103.

FACTORAGE.

The commission received by a factor as compensation. Winne v. Hammond, 37 Ill. 103.

FACTORY.

A building, or collection of buildings, appropriated to the manufacture of goods. Libenstein v. Baltic, etc., Co., 45 Ill. 303.

A "factory," within s. 3, 30 & 31 V. c. 103, relates to trades carried on in covered buildings, and not to open-air processes, such as a quarry, or cement works on a large piece of land. Kent v. Astley, 39 L. J. M. C. 3; 10 B. & S. 802; L. R. 5 Q. B. 19: Redgrave v. Lee, 43 L. J. M. C. 105; L. R. 9 Q. B. 363.

Popular Sense.

In its popular sense the term "factory" does not necessarily mean a single building or edifice but may apply to several, where they are used in connection with each other, for a common purpose, and stand together in the same enclosure. Liebenstein v. Baltic, etc., Co., 45 Ill. 303.

Employment Act.

The term "factory," as used in the act of 1897, regulating the employment of children, is to be construed to mean any place where goods or products are manufactured, dyed, cleaned, or sorted, stored or packed, in whole or in part, for sale or for wages, and not for the personal use of the maker, or of his or her family or employer. Act of 1897, § 8 (J. & A. ¶ 5304). See also Ritchie v. People, 155 Ill. 102 (quoting similar definition in the act of 1893, held unconstitutional in that case).

FACTS AS FOUND.

The expression "facts as found," used in section 120 of the Practice Act (J. & A. ¶8657), relating to the final order of the Appellate Court in determining certain causes, implies the drawing of a conclusion or inference from the evidentiary facts embodied in the bill of exceptions, which conclusion or inference is nothing more than the factum probandum. Huyett, etc., Co. v. Edison Co., 167 Ill. 238; Siddall v. Jansen, 143 Ill. 540; Brown v. Aurora, 109 Ill. 169. See also Factum Probandum.

FACTS IN THE CASE.

Section 268 of the Revenue Act (J. & A. ¶9487), providing for the refund of money paid under an erroneous assessment of taxes on real property where the board is satisfied of the "facts in the case," means, by the quoted expression, when the board is satisfied that the land was not taxable. Champaign County v. Reed, 100 Ill. 307.

FACTUM PROBANDUM.

The ultimate fact or facts upon which the case depends. Huyett, etc., Co. v. Edison Co., 167 Ill. 238. Siddall v. Jansen, 143 Ill. 540; Brown v. Aurora, 109 Ill. 169.

FACULTIES.

In an action for personal injuries, it is not error in an instruction relating to contributory negligence to instruct the jury that it was the duty of plaintiff to use his "faculties" with ordinary and reasonable diligence for his own safety instead of the word "senses," the word used not requiring the jury to decide a psychological question with no evidence before them, since the use of the term "faculties" does not contemplate the necessity of the use by the plaintiff of his faculties of "music, worship, grandeur," etc., any more than the term "senses" would have required him to exercise his senses of smell, taste and touch in order to constitute ordinary care for his own

safety. Kaminski v. Chicago C. Ry. Co., 181 Ill. App. 709.

FAILING CIRCUMSTANCES.

"A man is 'in failing circumstances' who, being insolvent in fact, is acting in contemplation of actually stopping his business because he is utterly incapable of carrying it on." Millard's Appeal, 62 Conn. 185, citing Utley v. Smith, 24 Conn. 290; Quinebang Bank v. Brewster, 30 Conn. 559; Bloodgood v. Beecher, 35 Conn. 480; Hall v. Gaylor, 37 Conn. 550.

FAIR COMMENT.

"A fair comment (excusing what would otherwise be a libel) is a comment which is either true, or which, if false, expresses the real opinion of its author (as to the existence of matter of fact, or otherwise), such opinion having been formed with a reasonable degree of care and on reasonable grounds." Steph. Cr. 202.

"The nearest approach, I think, to an exact definition of the word 'fair,' is contained in the judgment of Tenterden, C. J., in Macleod v. Wakley (3 C. & P. 313), where he said,—'Whatever is fair and can be reasonably said of the works of authors or of themselves, as connected with their works, is not actionable, unless it appears, that, under the pretext of criticizing the works, the defendant takes an opportunity of attacking the character of the author: then it will be a libel.' "Per Bowen, L. J., Merivale v. Carson, 20 Q. B. D. 283.

FAIR COMPETITION.

"To draw a line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the courts." Fry, L. J., in Mogul Steamship Co. v. McGregor, 23 Q. B. D. 625; Lord Bramwell in S. C. (1892), S. C. 49. "In these days of instant communication with almost all parts of the world competition in life of trade, and I am not aware of any stage of competition called 'fair' intermediate between lawful and unlawful. The question of 'fairness' would be relegated to the

idiosyncrasies of individual judges. I can see no limit to competition, except that you shall not invade the rights of another." Lord Morris in S. C., 51.

FAIR CREDIT.

A "fair credit," within the meaning of Scates' Comp., ch. 59, \$ 18, with reference to the jurisdiction of justices of the peace, means such a credit as may be given without detriment to the defendant, and for giving which, even without his knowledge, he ought not to complain. Raymond v. Strobel, 24 Ill. 115.

FAIR MARKET VALUE.

The expression "fair market value," used in sections 1 and 11 of the act of 1909 (J. & A. ¶¶ 9597, 9607), known as the Inheritance Tax Act, with reference to the value of stock, means what they would bring at a sale after due notice of the facts, and under fair conditions in the ordinary course of business, and not what such stock would bring at a forced or involuntary sale. Walker v. People, 192 Ill. 110; Peoria, etc., Co. v. Peoria T. Ry. Co., 146 Ill. 377; Farson v. Buder, 187 Ill. App. 323.

FAIR VALUATION.

A provision in contract for the sale of land that the purchase price should be fixed by a "fair valuation" of the land implies a reasonable estimate to be made by the parties, or if they could not agree, to be determined by the court on proof. Hayes v. O'Brien, 149 Ill. 418; Estes v. Furlong, 59 Ill. 303.

FALL.

A building which is blown over by a high wind, the building remaining intact and retaining its identity as a building, does not "fall," within the meaning of a fire insurance policy providing that the policy be void as to buildings falling except as a result of fire, the quoted term, as applied to insurance, implying that the building has fallen in pieces or col-

lapsed. Teutonia, etc., Co. v. Bonner, 81 lll. App. 236.

FALSE ENTRY.

"'False entry' [in commercial or company bookkeeping] means an entry which is either totally fictitious, or fictitious to some extent." Kay, J., alone in Newport, etc., Dry Dock and Engineering Co. v. Paynter, 34 Ch. D. 91. Cotton, L. J., in delivering judgment on appeal, said: "An entry may be false in various ways—for instance, it may be wrong in amount, or it may be an entry of a transaction which never took place at all." Ib. 93.

FALSE IMPRISONMENT.

A trespass committed by an unlawful arrest and imprisonment. (Mexican Central Ry. Co. v. Gehr, 66 Ill. App. 178.) Conkling v. Whitmore, 132 Ill. App. 576.

The expression "false imprisonment," as used in the Criminal Code, means an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Criminal Code, div. 1, § 95 (¶ 3652); Brewster v. People, 183 Ill. 146.

In order to constitute false imprisonment there must be a detention and the detention must be unlawful. Gore v. Marshall Field & Co., 184 Ill. App. 487; Amborn v. Smyser, 182 Ill. App. 209.

It is false imprisonment where a person is improperly arrested without a warrant, and as far as the action of false imprisonment is concerned it makes no difference whether the person is subsequently prosecuted or not, the action being complete when the detention results from the improper arrest. Conkling v. Whitmore, 132 Ill. App. 576.

When the arrest is upon valid process issued by a court having jurisdiction, trespass for false imprisonment will not lie, though such arrest is maliciously procured by the prosecutor without probable cause. Seeger v. Pfeifer, 35 Ind. 15.

If the imprisonment is under legal process, but the action has been commenced and carried on maliciously and without probable cause, it is malicious prosecution. If it has been extra-judicial, without legal process, it is false imprisonment. Colter v. Lower, 35 Ind. 286.

FALSE OR BOGUS CHECKS.

The expression "false or bogus checks," used in section 98 of division 1 of the Criminal Code (J. & A. ¶ 3655), relating to the confidence game, does not include a note or order bearing the genuine signature of defendant, without forged or fictitious indorsements, since the person taking them did so on the faith of defendant's signature alone, no matter of how little value they were, and therefore any loss sustained thereby is not on account of any false or bogus character of the instruments. Pierce v. People, 81 Ill. 101.

FALSE PRETENSE.

May be defined to be a representation of some fact or circumstance, calculated to mislead, which is not true. To give it a criminal character there must be a scienter, and a fraudulent intent. Com. v. Drew, 19 Pick. (Mass.) 184.

A false pretence prima facie imports not a promise, but a misrepresentation as to something existing. Bradlaugh v. The Queen, 3 Q. B. Div. 623.

Such a fraudulent representation of an existing or past fact, by one who knows it not to be true, as is adapted to induce the person to whom it is made, to part with something of value. Jackson v. People, 126 Ill. 149; People v. Pouchot, 174 Ill. App. 15.

The expression "false pretenses," used in section 46 of division 1 of the Criminal Code (J. & A. ¶3547), defining the offense of conspiracy to do an illegal act, by necessary implication comprehends the element of intention to cheat and defraud. People v. Warfield, 172 Ill. App. 30.

If the possession of property is obtained by fraud, and the owner of it intends to part with his title as well as his possession, the offense is that of obtaining property by false pretenses. People v. Pouchot, 174 Ill. App. 15.

A false pretense may relate to quality,

quantity, the nature or other incident of the article offered for sale, whereby the purchaser, relying on such representation, is defrauded. Jackson v. People, 126 Ill. 149.

"An intent to defraud, accompanied by the actual commission of a fraud, by means of the false pretences used for the purpose of perpetrating it, constitutes the offence." Commonwealth v. Langley, 169 Mass. 95, citing Commonwealth v. Drew, 19 Pick, 179, 182. Commonwealth v. McDuffy, 126 Mass. 467.

Discoverable Fraud.

A false representation by which money or property is obtained is none the less a "false pretense," within the meaning of section 96 of division 1 of the Criminal Code (J. & A. ¶ 3653), because the falsity of the representation might have been discovered had the person deceived consulted the public records, since it is the policy of the law to protect simple minded and credulous people who trust to trick-Keyes v. People, 197 Ill. 641; Thomas v. People, 113 Ill. 537. See also Austin v. People, 63 Ill. App. 305, where it is held that the want of prudence and discretion on the part of the person defrauded is no defense in a prosecution under the statute.

Passing Worthless Draft.

Since conduct is fully as expressive as words, one may be guilty of a "false pretense," within the meaning of section 96 of division 1 of the Criminal Code (J. & A. ¶ 3653), by passing for value a draft known to be worthless. Whiteman v. People, 83 Ill. App. 374.

Necessity That Property Be Obtained.

False representations, amounting to a "false pretense" within the meaning of section 96 of division 1 of the Criminal Code (J. & A. ¶ 3653), do not constitute the crime unless the property has actually been obtained. Graham v. People, 181 Ill. 493.

Relation of Representation to Acquisition of Property.

In order to constitute a "false pretense," within the meaning of section 96 of division 1 of the Criminal Code (J. & A. ¶3653), where the thing secured by the false representation was the execution of a deed, the connection between the pretenses and the obtaining of the deed must appear either by a natural connection between them or by facts leading to a necessary legal conclusion of the guilt of defendant. Simmons v. People, 187 Ill. 331.

Ordinary Misrepresentation.

A misrepresentation of a fact in ordinary business dealings, or in regard to a parol executory contract, is not a "false pretense," within the meaning of section 96 of division 1 of the Criminal Code (J. & A. ¶ 3653). Josma v. Western, etc., Co., 249 Ill. 515.

Character of Representation.

The expression "false pretense," used in section 96 of division 1 of the Criminal Code (J. & A. ¶3653), includes cases where the seller of property knowingly makes false statements which are made and intended as an assertion of fact material to the negotiation, as a basis on which the sale is to be made, if the buyer is thereby induced to part with his property. Jackson v. People, 126 Ill. 149.

In order to constitute "false pretense" under the Criminal Code of 1845, now section 96 of the Criminal Code (J. & A. ¶ 3653), it is necessary that the false pretense, either with or without the cooperation of other causes, shall have a decisive influence upon the mind of the owner, so that, without their weight, he would not part with his property. Cowen v. People, 14 Ill. 351.

A "false pretense," within the meaning of section 96 of the Criminal Code (J. & A. ¶ 3653), must be a false representation of an existing or past fact. Austin v. People, 63 Ill. App. 304.

Subsequent Reduction to Writing.

A false representation is none the less a "false pretense," within the meaning of section 96 of the Criminal Code (J. & A. ¶ 3653), if property is secured thereby, because the representation was later put into a writing or contract. Moore v.

People, 190 Ill. 335. Jackson v. People, 126 Ill. 144.

FALSE REPRESENTATION.

Must Be of Existing or Past Fact.

A "false representation," within the meaning of the law, must be a representation of an existing or past fact (Murphy v. Murphy, 189 Ill. 364; Haenni v. Bleisch, 146 Ill. 267; People v. Healy, 128 Ill. 15; Gage v. Lewis, 68 Ill. 616; Krieger v. Krieger, 120 Ill. App. 647; Murray v. Smith, 42 Ill. App. 554; People v. Jacobs, 72 Ill. App. 294; Murray v. Smith, 42 Ill. App. 554), which fact is material (People v. Healy, 128 Ill. 15), and not merely as to an intention in the future. Haenni v. Bleisch, 146 Ill. 267; People v. Healy, 128 Ill. 15; Gage v. Lewis, 68 Ill. 615; Krieger v. Krieger, 120 Ill. App. 647.

Promise Excluded.

A promise to do an act in the future does not constitute a "false representation," within the meaning of the law (Murphy v. Murphy, 189 Ill. 364; Haenni v. Bleisch, 146 Ill. 267; People v. Healy, 128 Ill. 16; Gage v. Lewis, 68 Ill. 616; Krieger v. Krieger, 120 Ill. App. 647; Murray v. Smith, 42 Ill. App. 554), although accompanied with an intention not to perform. People v. Healy, 128 Ill. 16; Gage v. Lewis, 68 Ill. 616; Krieger v. Krieger, 120 Ill. App. 647; Murray v. Smith, 42 Ill. App. 554.

PAMILIA.

A Latin word definable as "the whole of the slaves in a household." Race v. Oldridge, 90 Ill. 252.

FAMILUS.

A Latin word definable as "a slave." Race v. Oldridge, 90 Ill. 252.

FAMILY.

Persons collectively who live together in a house or under one head; a household. Race v. Oldridge, 90 Ill. 252; Cole v. Bentley, 26 Ill. App. 262. A collection of persons living together. Holnback v. Wilson, 159 Ill. 153; Rock v. Haas, 110 Ill. 533.

The collective body of persons who live in one house, and under one head or manager; a household, including parents, children, servants, and, as the case may be, lodgers or boarders. Race v. Oldridge, 90 Ill. 252; Chicago & N. W. Ry. Co. v. Chisholm, 79 Ill. 587; Cole v. Bentley, 26 Ill. App. 262.

The collective body of persons who form one household, under one head and one domestic government, including parents, children and servants, and, as sometimes used, even lodgers or boarders: parents with their children, whether they dwell together or not; in a more general sense, any group of persons closely related by blood, as parents, children, uncles, aunts and cousins; often used in a restricted sense only of a group of parents and children founded on the principle of monogamy; father, mother and children; all the individuals who live under the authority of another, including servants of the family. Danielson v. Wilson, 73 Ill. App. 299.

The word "family" has no uniform, definite meaning. It is used to indicate, first, the whole body of persons who form one household, thus including also servants; second, the parents with their children, whether they dwell together or not; and third, the whole group of persons closely related by blood. First Catholic Slovak Ladies' Union of the United States of America v. Florek, 210 Ill. App. 469.

Those who descend from one common progenitor—a tribe or race. Chicago & N. W. Ry. Co. v. Chisholm, 79 Ill. 587.

Must Consist of More Than One Person.

In the strict sense of the term, one person cannot constitute a "family." Berry v. Hanks, 28 Ill. App. 55.

Scope of Term.

The term "family" includes parents, children or servants, whether one, few or many. Gaines v. Gaines, 109 Ill. App. 229.

A "family" comprises a father, mother and children, but in a wider sense it may include domestic servants; all who live in one house under one head. Danielson v. Wilson, 73 Ill. App. 299.

The term "family" has a restricted sense, which only includes the father, mother, and children, but in a more enlarged sense it includes all individuals who live under the authority of another, and includes servants of a family. Race v. Oldridge, 90 Ill. 252.

The term "family" is used to indicate, first, the whole body of persons who form one household, including servants; second, the parents with their children, whether they dwell together or not; third, the whole group of persons closely related by blood. Old People's, etc., Society v. Wilson, 176 Ill. 99.

The term "family" may mean a man's household, consisting of himself, his wife, children and servants, or his wife and children, or his children excluding his wife; or, in the absence of wife and children, it may mean his brothers and sisters or next of kin; or it may mean the genealogical stock from which he may have sprung. Old People's, etc., Society v. Wilson, 176 Ill. 99.

A family is a collection of persons living together, and one person cannot therefore be a family. Moreover, to constitute a family within the meaning of a statute providing that in order to establish an estate of homestead the person claiming must have a family, a mere aggregation of individuals in the same house is not sufficient. There must be an obligation on the head of the house to support the others, or some of them, and on their part a corresponding state of dependence. Such head of a family need not be a married man. A bachelor or widower with whom live relations depending on him for support may be regarded as a householder having a family. Holnback v. Wilson, 159 Ill. 148, citing Greenwood v. Maddox, 27 Ark. 684; Harbison v. Vaughn, 42 Ark. 539.

Has Broad Meaning.

The term "family" has a broad and comprehensive meaning in general use. Race v. Oldridge, 90 Ill. 252.

Adult Children as Part of.

A son or daughter of a parent, residing with him, and receiving his support and subject to his control do not, on arriving at full legal age, from that fact alone, cease to be members of the parent's family. Chicago & N. W. Ry. Co. v. Chisholm, 79 Ill. 587.

As Used in Statute or Will.

The term "family," as used in a statute or will, has various significations, some more restricted, others more extended, the general scope of the statute or will being material in each case. Old People's, etc., Society v. Wilson, 176 Ill. 99.

The primary legal meaning of "family" is not equivalent to familia or famille. but means "children" (per Jessel, M. R., Pigg v. Clarke, 45 L. J. Ch. 849; 3 Ch. D. 672). Therefore where there is a gift to the "family" of a person who has children living at the testator's death, the word means exclusively the children of that person and does not include grandchildren or great-grandchildren (Barnes v. Patch, 8 Ves. 604; Re Parkinson, 20 L. J. Ch. 224; 1 Sim. N. S. 242: Burt v. Hellyar, L. R. 14 Eq. 160; 41 L. J. Ch. 430: Pigg v. Clarke, sup.: Re Muffett, 56 L. J. Ch. 600; 56 L. T. 685; 51 J. P. 660; 3 Times Rep. 126); or wife, (Re Hutchinson & Tennant, 8 Ch. D. 540: Re Muffett, sup.); but an illegitimate child, treated and recognized as a child, would be entitled to participate as part of the "family" (per James, L. J., Lambe v. Eames, 40 L. J. Ch. 448; 6 Ch. 597: Humble v. Bowman, 47 L. J. Ch. 62). Sq, Would the foregoing be the rule in a case where the person spoken of had children living at the date of the testator's will but none at his death? It should seem not; for a will speaks as if executed immediately before death (1 V. c. 26, s. 24), and to construe "family" as "children" in the case supposed would be to work an intestacy.

The word "family" may, however, be controlled by the context. Thus where a testator directed his business to be carried on by his wife and son "for the mutual benefit of my family" it was held that the wife was included (Blackwell v.

Bull, 5 L. J. Ch. 251; 1 Keen, 176). So the word "family" may, by the context, be controlled to mean "posterity or descendants" generally, as in Williams v. Williams (20 L. J. Ch. 280; 1 Sim. N. S. 358; but whether a correct construction was adopted in that case was doubted by Jessel, M. R., in Pigg v. Clarke, 45 L. J. Ch. 852); or to mean "heirs" or "next of kin" (per Cranworth, V.-C., Williams v. Williams, 20 L. J. Ch. 283: or "heir" or "heir-at-law" or "heirs of the body" (Doe Chattaway v. Smith, 5 M. & S. 126: Wright v. Atkyns, 19 Ves. 299: Griffiths v. Evan, 11 L. J. Ch. 219; 5 Bea. Lucas v. Goldsmid, 30 L. J. Ch. 935; 29 Bea. 657; 2 Jarm. 91-93); or "blood relations" (Re Macleay, 44 L. J. Ch. 441; L. R. 20 Eq. 186); or "relations" (2 Jarm. 95: Snow v. Teed, 39 L. J. Ch. 420; L. R. 9 Eq. 622; or relations by marriage (McLeroth v. Bacon, 5 Ves. 158; or even rejected as surplusage (Robinson v. Waddelow, 5 L. J. Ch. 350; 8 Sim. 134: Sv. this last case questioned in Re Parkinson, sup.), or as being too uncertain (Lewin, 133).

Obviously where the person spoken of is single, the word "family" cannot be construed as meaning his or her "children," and accordingly the statutory next of kin would in such a case be denoted, qua personalty (Cruwys v. Colman, 9 Ves. 319); and probably the heir-at-law would take the realty. It is submitted that the construction would be the same if the person spoken of were married but never had a child; and possibly also if he had had a child, but none living either at the date of the will or at the death of the So also, though less strongly. testator. it is submitted that the construction would be the same if the person spoken of had a child living at the date of the will but none at the death of the testator.

Administration Act.

The term "family." used in section 74 of the Administration Act (J. & A. ¶ 123), relating to awards to widows or children of a decedent, includes such persons as constituted the family of the deceased at the time of his death, whether

servants, or children who had attained their majority (Gillett v. Gillett, 207 Ill. 146; Strawn v. Strawn, 53 Ill. 274), but does not include boarders, the meaning of the term, so used, being limited to those constituting the private household of the deceased. Strawn v. Strawn, 53 Ill. 274.

A widow with whom resides a daughter who is more than 18 years of age has a "family," within the meaning of section 77 of the Administration Act (J. & A. ¶ 126), relating to allowances to children of decedents dying without leaving a wife, although such daughter possessed an independent fortune. Gillett v. Gillett, 207 Ill. 149.

Exemptions Act.

One person cannot constitute a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶5571), relating to homesteads. Holnback v. Wilson, 159 Ill. 153; Rock v. Haas, 110 Ill. 533.

Having a wife is having a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶ 5571), relating to homesteads. Kitchell v. Burgwin, 21 Ill. 45.

Where a family consists of but a husband and wife, the wife alone constitutes the "family" referred to in section 3 of the act of 1877 (J. & A. ¶ 5585), relating to exemptions of personal property, providing that in case the head of a family shall die, desert or cease to reside with it, the "family" shall be entitled to the exemptions provided for the head of the family by section 1 of the same act (J. & A. ¶ 5583). Berry v. Hanks, 28 Ill. App. 57.

In order to have a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶5571), relating to homesteads, it is not necessary that the head of the household be a married man. Wike v. Garner, 179 Ill. 264; Holnback v. Wilson, 159 Ill. 154.

An unmarried man who resides with two sisters whom he supports has a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶ 5571), relating to homesteads. Wike v. Garner, 179 Ill. 264.

A wife owning real estate claimed to be exempted as a homestead, who has a husband residing with her, has a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶ 5571), relating to homesteads, the statute not requiring that she be the head of the family. Zander v. Scott, 165 Ill. 54.

A collection of individuals occupying a house, in no manner connected with each other, no obligation resting on the head of the house to support the others, and no dependence existing on their part upon the head of the house, does not constitute a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶5571). Holnback v. Wilson, 159 Ill. 154.

A person and his or her children, permanently separated, cannot constitute a "family," within the meaning of section 1 of the Exemptions Act (J. & A.¶ 5571), relating to homesteads, since a residence together is necessary to constitute the relation. Rock v. Haas, 110 Ill. 533.

A woman who resides on land with a man to whom she is not married has no "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶ 5571), relating to homesteads, although she marries him after judgment became a lien on the land wherein a homestead right is claimed. Rock v. Haas, 110 Ill. 534.

Where a widow after the death of her husband keeps a boarding house, employing servants to do household work, the servants and a woman friend of the widow residing with her, but who does not pay board or room rent, are members of the "family," within the meaning of section 1 of the act of 1877 (J. & A. ¶ 5583), relating to the exemption of personal property from seizure on process. Race v. Oldridge, 90 Ill. 254.

To constitute a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶ 5571), relating to homesteads, there must be a legal or moral obligation upon the head of the house to support the others, or some of them, and on their part a corresponding state of dependence. Holnback v. Wilson, 159 Ill. 153; Brokaw v. Ogle, 170 Ill. 126; Stodgell v. Jackson, 111 Ill. App. 258.

A single woman who takes a boy into her home and has undertaken to educate and provide for him as her own, though under no legal obligation to do so, has a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶ 5571), relating to homesteads, although the boy's father is physically able to support him, and is legally responsible for such support. Stodgell v. Jackson, 111 Ill. App. 258.

A bachelor or widower occupying a home as the head of a family, on land desired to be set apart as a homestead, with whom reside parents, sisters or brothers dependent on him, and where there is a corresponding duty of support resting on him, has a "family," within the meaning of section 1 of the Exemptions Act (J. & A. ¶5571), relating to homesteads. Wike v. Garner, 179 Ill. 264; Holnback v. Wilson, 159 Ill. 154.

Husband and Wife Act.

The test as to whether there is a "family," within the meaning of section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the liability of the property of husband and wife for the expenses of the family, is the living together of husband and wife, or husband, wife and children, and holding themselves out as one family. Chicago, etc., Ass'n v. Scott, 159 Ill. App. 355.

A man and a woman living together as husband and wife, and recognized and treated as such in the community where they live, constitute a "family," within the meaning of section 15 of the Husband and Wife Act (J. & A. ¶ 6152), relating to the liability of the property of husband and wife for expenses of the family, so as to make the man liable to those furnishing to the woman articles coming under the head of such expenses, where the articles were furnished under a belief that the family relation existed, such belief being justified by the conduct of the parties. Hoyle v. Warfield, 28 Ill. App. 629.

When a husband and wife are living together, they and their children, if any, living with them, constitute the "family," within the meaning of section 15 of the

Husband and Wife Act (J. & A. ¶ 6152), relating to the liability of the property of husband and wife for the expenses of the family. Featherstone v. Chapin, 93 Ill. App. 225.

Railroad Ticket.

A railroad ticket entitling the holder and "family" to ride thereon includes, under the quoted term, a son of the holder residing with his father, although more than twenty-one years old. Chicago & N. W. Ry. Co. v. Chisholm, 79 Ill. 587.

Fraternal Society Act.

The word "family," as used in the Fraternal Benefit Society Act (J. & A. ¶ 6646 et seq.), and in the by-laws of an organization organized thereunder, means a collective body, consisting of two or nine persons who live together and between whom there are family relations of a domestic character. Women's Catholic Order of Foresters v. Heffernan, 206 Ill. App. 70.

FAMILY EXPENSES.

See Expenses of the Family.

FAMILY FREEDOM.

An advertisement by an attorney offering to secure "family freedom" refers to the marital relation, and can mean nothing else than freedom from family ties, and will be understood by the pubic as an advertisement to aid in procuring divorces. People v. Smith, 200 Ill. 443.

FARM.

Land devoted to the purposes of agriculture. Williams v. Chicago & N. W. Ry. Co., 132 Ill. App. 277.

Fearme, Ferm, Firm. [L. Lat. firma; L. Fr. ferme; from Sax. fearme, feorme, food or provisions.] In English law. The rent of land held under lease, anciently reserved and paid in provisions, (in edulis). Spelman, voc. Firma. Cowell, voc. Ferme. 2 Bl. Com. 318. Gilbert on Rents, 2. Called by Spelman, reditus annonarius.

In American law, farm denotes a tract of land devoted in part, at least, to cultivation, without reference to its extent, or to the tenure by which it is held. 2 Binney's R. 238. As to what passes by the word farm, see 5 Pick. R. 512. 18 Pick. 553. 6 Metcalf's R. 529. 4 Greenleaf's R. 14. 2 Hilliard's Real Prop. 338, 343, 345.

A farm, held as such under an agricultural lease, does not lose its character of a "farm" because the lessee converts it into a market garden. Meux v. Cobley (1892), 2 Ch. 253.

A body of land, usually under one ownership, devoted to agriculture, either to the raising of crops, or pasture, or both. People v. Caldwell, 142 Ill. 441; Williams v. Chicago & N. W. Ry. Co., 132 Ill. App. 276.

A tract of land under one control or forming a single property, devoted to agriculture, stock raising, dairy produce or some allied industry; a tract of ground cultivated or designed for cultivation by a farmer; a piece of ground devoted by its owner to agriculture. Williams v. Chicago & N. W. Ry. Co., 228 Ill. 596 (aff'g 132 Ill. App. 276).

What Constitutes.

A farm may consist of any number of acres in fields or government subdivisions, and may lie in one township and county or in more than one. People v. Scheifley, 252 Ill. 488; People v. Caldwell, 142 Ill. 441.

It is not essential that tracts should adjoin each other, in order to constitute a farm, if such tracts are not provided with separate farm buildings, provided the tracts practically constitute a farm. People v. Scheifley, 252 Ill. 489.

Not Circumscribed by Political Subdivisions.

The term "farm" is not understood to have any necessary relation to or to be circumscribed by political or congressional subdivisions. People v. Caldwell, 142 Ill. 441.

The fact that different tracts of land owned by the same person are managed together as parts of one system, for the raising of stock or grain, does not make them a single farm. People v. Scheifley, 252 Ill. 489.

FARM CROSSINGS.

Necessity for Agricultural Use.

A crossing desired to connect portions of unplatted land within a city, incorporated town or village is not a "farm crossing" within the meaning of section 1 of the act of 1874 (J. & A. \P 8811), relating to the fencing and operation of railroads, where it does not appear that the land was actually used for farming purposes. Williams v. Chicago & N. W. Ry. Co., 228 Ill. 597.

The "farm crossings" required by section 1 of the act of 1874 (J. & A. ¶ 8811), relating to the fencing and operating railroads, relate to land devoted to agriculture. People v. Cleveland, C., C. & St. L. Ry. Co., 147 Ill. App. 144; Williams v. Chicago & N. W. Ry. Co., 132 Ill. App. 277.

Necessity.

To constitute a "farm crossing," within the meaning of section 1 of the act of 1874 (J. & A. ¶8811), relating to the fencing and operation of railroads, the crossing must be necessary to enable the owner of the farm to use the land which is separated by the railroad (Shea v. Cleveland, C., C. & St. L. Ry. Co., 250 Ill. 100; Chalcraft v. Louisville, E. & St. L. Ry. Co., 113 Ill. 87; People v. Cleveland, C., C. & St. L. Ry. Co., 146 Ill. App. 144; Baltimore & O. S. W. Ry. Co. v. Keck, 84 Ill. App. 166; Louisville, E. & St. L. Ry. Co. v. Chalcraft, 14 Ill. App. 520), and in such case the word "necessary" means reasonably convenient. Chalcraft v. Louisville, E. & St. L. Ry. Co., 113 Ill. 88. The question whether such necessity exists is a question of fact (Shea v. Cleveland, C., C. & St. L. Ry. Co., 250 Ill. 100; Louisville, E. & St. L. Ry. Co. v. Chalcraft, 14 Ill. App. 520) in determining which the interests of the landowner are not alone to be consulted, since the question also affects the interests of the railroad company and the public, (Williams v. Chicago & N. W. Ry. Co., 228 Ill. 597; Chalcraft v. Louisville, E. & St. L. Ry. Co., 113 Ill. 88; People v. Cleveland, C., C. & St. L. Ry. Co., 147 Ill. App. 145; Louisville, E. & St. L. Ry. Co. v. Chalcraft, 14 Ill. App. 520) for which reason it is not enough to show that the proposed crossing would add somewhat to the convenience of the landowner. Louisville, E. & St. L. Ry. Co. v. Chalcraft, 14 Ill. App. 520.

Intent in Securing Land.

Where a farm adjoins a steam railroad on one side, and a station is established by an electric railroad on the side of the steam railroad not adjoined by the farm, a crossing over the steam railroad to land on the other side of the steam railroad, subsequently purchased by the farm owner, is a "farm crossing" within the meaning of section 1 of the act of 1874 (J. & A. ¶8811), relating to the fencing and operation of railroads, if the land is of substantial value and capable of profitable cultivation, and if the crossing is necessary in order to cultivate the two tracts as a connected farm, although the land was purchased in order to force the railroad to give the landowner a crossing desired in order to reach the station of the electric railroad, and although the farmer does not personally cultivate the purchased land, but rents it to a tenant, the owner's motive in securing the land being immaterial in such case. Shea v. Cleveland, C., C. & St. L. Ry. Co., 250 III. 99.

For Whose Benefit.

The "farm crossings" required by section 1 of the act of 1874 (J. & A. ¶ 8811), relating to fencing and operating railroads, are intended for the use and benefit of the farm only. Illinois C. R. Co. v. Willenborg, 117 Ill. 212; People v. Cleveland, C., C. & St. L. Ry. Co., 147 Ill. App. 144.

Purpose.

The purpose of the "farm crossings" required by section 1 of the act of 1874 (J. & A. ¶ 8811), relating to the fencing and operation of railroads, is to afford a convenient private passageway between

farms situated on both sides of the railroad. People v. Cleveland, C., C. & St. L. Ry. Co., 147 Ill. App. 143.

The purpose of a "farm crossing," provided for in section 1 of the act of 1874 (J. & A. ¶8811), relating to the fencing and operation of railroads, is to secure to the farmer the crossing most convenient to him in the reasonable and customary use and occupation of his premises. Williams v. Chicago & N. W. Ry. Co., 228 Ill. 597.

Railroads Affected.

The requirement of "farm crossings" by section 1 of the act of 1874 (J. & A. ¶8811), relating to the fencing and operation of railroads, is an exercise of the police power, and applies to all railroads, whether constructed before or after its passage. Chicago B. & Q. R. Co. v. People, 212 Ill. 115; Chicago & N. W. Ry. Co. v. Chicago, 140 Ill. 319; Illinois C. R. Co. v. Willenborg, 117 Ill. 208; Baltimore & O. S. W. Ry. Co. v. Keck, 84 Ill. App. 167.

FARMER.

A farmer is one who cultivates his own land, or that of another, for his own profit;—he is not as such a tradesman; nor though he do the labor with his own hand is he a laborer. R. v. Silvester, 33 L. J. M. C. 79; nom. R. v. Cleworth, 4 B. & S. 927.

"Webster defines a farmer to be 'one who is devoted to the tillage of the soil; an agriculturist; a husbandman,' and farming he defines to mean 'the business of cultivating land.' He defines 'husbandry' to mean 'the business of a farmer, comprehending the various branches of agriculture.'" Estate of Slade, 122 Cal. 437 (1898).

FARMING NEIGHBORHOOD.

"A farming neighborhood may be defined as a region in which there are several tracts of farming land with a proximity of location, and which can be regarded as a whole with reference to some common interests, although they are dis-

tinct in boundaries and held in individual proprietorship." Lindsay Irrigation Co. v. Mehrtens, 97 Cal. 680 (1893).

FARMING STOCK.

A bequest of "farming stock" includes not only all movable property upon or belonging to the farm (Wms. Exs. 1193: Harvey v. Harvey, 32 Bea. 441), but also grawing crops (per Jessel, M. R., Re Roose, Evans v. Williamson, 50 L. J. Ch. 197; 17 Ch. D. 696; 29 W. R. 230,—following Cox v. Godsalve, 6 East, 604 n.: West v. Moore, 8 East, 339: Blake v. Gibbs, 5 Russ. 12, n.: and dissenting from Vaisey v. Reynolds, 6 L. J. O. S. Ch. 172; 5 Russ. 12). In Evans v. Williamson, the M. R. said, "the reasoning of Vaisey v. Reynolds is quite untenable in the face of the previous decisions."

In Brooksbank v. Wentworth (3 Atk. 64) a bequest of "Stock on Farm" was held to include a lessee's trade interest in a malt-house and a stock of malt.

FAULT.

Within the meaning of the rule that in order to maintain a bill for separate maintenance the complainant must show, inter alia, that she is living apart from her husband without her "fault," the quoted term has reference to a voluntary consenting to the separation, or such failure of duty or misconduct on her part as materially contributed to the disruption of the martial relations, and, if she leave the husband voluntarily or by consent, or if her misconduct has materially induced the husband's action relied upon as justifying the separation, it is not without her fault, within the meaning of the law. Johnson v. Johnson, 125 Ill. 515, Rosenbleet v. Rosenbleet, 122 Ill. App. 411.

FAULT AND NEGLECT.

Distinguished.

The former imports "error or mistake," and the latter "omission," forbearance to do anything that can be done or that requires to be done. Malone v. United States, 5 Court of Claims R. 489.

FED.

The term "fed" has a well understood meaning when used in a contract relating to cattle or hogs, which is, to be made fit for market by feeding, and not simply to keep them alive. Brockway v. Rowley, 66 Ill. 102.

FEDERAL QUESTION.

A question arising under the constitution, laws or treaties of the United States. Rothschild v. Steger, etc., Co., 256 Ill. 205.

FEDERALIST.

A work which has been emphatically styled the text book of the Constitution. Coles v. Madison County, 1 Ill. 155.

FEE.

The largest possible estate which a man can have, being an absolute estate, where lands are given to a man and his heirs absolutely, without any end or limitation put to the estate. Biggerstaff v. Van Pelt, 207 Ill. 615.

The word "fee," taken as meaning an estate of inheritance, is applicable to, and may be had in, any kind of hereditament, either corporeal or incorporeal, the grantee as to the former, being said to be seized in his demesne as of fee, and of the latter that he is seized as of fee, only,—the reason of the distinction being, that while the owner of the easement may own the same, to himself and his heirs, as fully as he could the land, yet he has no dominion over the land itself, but only the right of subjecting it to the servitude granted. Oswald v. Wolf, 126 Ill. 548.

FEE SIMPLE.

Chancellor Kent's Definition.

Fee simple is a pure inheritance, clear of any qualifications or conditions, giving the right of succession to all the heirs generally; an estate of perpetuity, conferring an unlimited power of alienation. Orr v. Yates, 209 Ill. 231; Koef-

fler v. Koeffler, 185 Ill. 267; Friedman v. Steiner, 107 Ill. 131.

"Fee"—"Fee Simple Absolute" Synonymous.

The terms "fee," "fee simple," and "fee simple absolute" are equivalent terms. Bowen v. John, 201 Ill. 295.

Defines Quantity of Estate.

The term "fee simple" is known at common law as one which defines the quantity of the estate, being used in contradistinction from a fee tail, a life estate, or a term of years. Frink v. Darst, 14 Ill. 309.

Nature of Estate.

An estate in fee simple is an estate descendible to heirs generally. Kolmer v. Miles, 270 Ill. 24.

A limitation of an estate to the surviving heirs of the body of a devisee excludes the idea of an estate in fee simple. Friedman v. Steiner, 107 Ill. 130.

An estate in fee simple is a pure inheritance, clear of any qualifications or conditions, which must be given or granted generally, absolutely and simply. Forbes v. Forbes, 261 Ill. 429. To the same effect see Jones v. Port Huron, etc., Co., 171 Ill. 507.

Generally the expression "fee simple" means an absolute estate of inheritance, but not necessarily so, as it may apply to a fee determinable. Orr v. Yates, 209 Ill. 231. See Base or Determinable Fee.

An estate in fee simple is the greatest estate or interest which one can possess in lands. Bowen v. John, 201 Ill. 295.

A fee simple estate is the highest estate in land, known to the law. Deere v. Chapman, 25 Ill. 499.

One of the qualities of a fee simple estate is the power to convey a fee simple estate to another. Koeffler v. Koeffler, 185 Ill. 267; Friedman v. Steiner, 107 Ill. 131. To the same effect see Lambe v. Drayton, 182 Ill. 116.

How Created.

The usual manner of creating a devise in fee simple is by giving the property to

the devisee, his heirs and assigns forever, but to him and his heirs is all that is technically required. Wolfer v. Hemmer, 144 Ill. 559.

Will.

Where a devise employs language sufficient to pass a fee simple title, an estate in fee simple will pass in the absence of a clear intention to cut the fee down to a life estate. Bowen v. John, 201 Ill. 296; Davis v. Ripley, 194 Ill. 402; Wolfer v. Hemmer, 144 Ill. 563; Giles v. Anslow, 128 Ill. 195; Walker v. Pritchard, 121 Ill. 233; Wicker v. Ray, 118 Ill. 477.

FEE SIMPLE ABSOLUTE.

An estate in "fee simple absolute" means a perfect title, and is the entire and absolute interest and property in the land, from which it follows that no one can have a greater estate." Frink v. Darst, 14 Ill. 308.

FEE SIMPLE ESTATE OF INHERITANCE.

Conveyances Act—Statutory Definition.

Every estate in lands which shall be granted, conveyed or devised, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inheritance, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction or operation of law. Conveyances Act § 13 (J. & A. ¶ 2245); Bowen v. John, 201 Ill. 295; Davis v. Ripley, 194 lll. 401; Lehndorf v. Cope, 122 Ill. 327; Frisby v. Ballance, 7 Ill. 149.

FEE WITH A DOUBLE ASPECT.

A conveyance or devise is said to be a "fee with a double aspect" where two remainders in fee are limited, one after the other, but in such fashion that only one is to take effect, the one being a substitute for and not subsequent to the other. Peoria v. Darst, 101 Ill. 619.

FEEDING AND WATERING.

A shipping contract providing that the owner of hogs shipped shall assume the

responsibility of "feeding and watering" them while in transportation refers only to the ordinary sustenance which such animals require in the course of transportation, and does not include the duty of applying water externally to the hogs when necessary to prevent death from heat while confined in cars, which duty rests upon the carrier. Illinois C. R. Co. v. Adams. 42 Ill. 487.

FEES.

Compensation to an officer for services rendered. Galpin v. Chicago, 159 Ill. App. 166.

The per diem compensation to be paid to court reporters, provided for by section 2 of the act of 1887 (J. & A. ¶ 3063) is not "fees," within the meaning of section 13 of article 10 of the Constitution of 1870, requiring semiannual reports by officers paid in whole or in part by fees. People v. Chetlain, 219 Ill. 258.

The additional per diem compensation to be paid to the county superintendent of schools provided for by section 27 of the Fees and Salaries Act (J. & A. ¶ 5628) is not "fees" within the meaning of section 11 of article 10 of the Constitution of 1870, providing that the fees of township and county officers shall be uniform. Knox County v. Christianer, 68 Ill. 455; Jefferson County v. Johnson, 64 Ill. 151.

FELLOW-CONSPIRATORS.

In a trial on an indictment for conspiracy, the expression "fellow conspirators," used in an instruction, means all who take part in the conspiracy after it is formed and while it is in execution, and all who, with the knowledge of the facts, concur in the facts originally formed and aid in executing them. People v. Poindexter, 243 Ill.

FELLOW SERVANT.

Basis of Doctrine.

The fellow servant rule rests both on considerations of public policy and upon the rule that a servant enters an employment assumes all the ordinary risks of such employment, including the negligence of fellow servants associated with him. Chicago & E. I. R. Co. v. White, 209 Ill. 131.

Object of Rule.

The object of the fellow servant rule is to make each servant vigilant in seeing that the others are careful, prudent and faithful in the discharge of their duty, and if not, that it shall be to their interest to report all derelictions that occur. Pittsburg Ft. W. & C. Ry. Co. v. Powers, 74 Ill. 345.

When Rule Inapplicable.

The fellow servant rule does not apply when the suit is not against the common master of the injured servant and the servant whose negligence causes the injury, but against a stranger to both of them. Chicago & A. R. Co. v. Raidy, 203 Ill. 314; Chicago & A. R. Co. v. Harrington, 192 Ill. 29; Spry, etc., Co. v. Duggan, 182 Ill. 221; Chicago & E. I. R. Co. v. O'Connor, 119 Ill. 598.

Rules Governing.

In order to establish the relation of fellow servants between servants of the same master, it is not enough that such servants are indirectly cooperating in the general business of the master, (Linquist v. Hodges, 248 Ill. 504; Lyons v. Ryerson, 242 Ill. 414; Illinois, etc., Co. v. Ziemkowski, 220 Ill. 330; Chicago & E. I. R. Co. v. White, 209 Ill. 129; Swisher v. Illinois C. R. Co., 182 Ill. 548; Chicago & A. R. Co. v. Kelly, 127 Ill. 644; Chicago N. W. R. Co. v. Moranda, 108 Ill. 582; Illinois, etc., Co. v. Ziemkowski, 123 Ill. App. 295; Indiana I. & I. R. Co. v. Otstot, 113 Ill. App. 46; Otstot v. Indiana I. & I. R. Co., 103 Ill. App. 140) but it must appear that such servants were directly cooperating with each other in a particular work at the time of the injury, or that their usual duties were such as to bring them into habitual association, so as to afford them the power and opportunity of exercising a mutual influence upon each other, promotive of proper caution. Thompson v. Northern, etc., Co., 256 Ill.

85; Linquist v. Hodges, 248 Ill. 503; Bennett v. Chicago C. Ry. Co., 243 Ill. 428; Lyons v. Ryerson, 242 Ill. 414; Crane Co. v. Hogan, 228 Ill. 345; Illinois. etc., Co. v. Ziemkowski, 220 Ill. 329; National, etc., Co. v. McCorkle, 219 Ill. 562; Illinois, etc., Co. v. Cioni, 215 Ill. 589; Chicago & E. I. R. Co. v. White, 209 Ill. 129; Chicago C. Ry. Co. v. Leach, 208 Ill. 205; Chicago & A. R. Co. v. Wise, 206 Ill. 460; Illinois, etc., Co. v. Coffey, 205 Ill. 212; Hartley v. Chicago & A. R. Co., 197 Ill. 446; Columbian Exposition v. Lehigh, 196 Ill. 620; Duffy v. Kivilin, 195 Ill. 634; Pagels v. Meyer, 193 III. 178; Swisher v. Illinois C. R. Co., 182 Ill. 547; Illinois, etc., Co. v. Bauman, 178 Ill. 356; Chicago & A. R. Co. v. Swan, 176 Ill. 428; Chicago & A. R. Co. v. House, 172 Ill. 604; Chicago & A. R. Co. v. O'Brien, 155 Ill. 634; Wenona, etc., Co. v. Holmquist, 152 Ill. 591; Chicago & E. I. R. Co. v. Kneirim, 152 Ill. 466; Louisville E. & St. L. R. Co. v. Hawthorn, 147 Ill. 230; Joliet, etc., Co. v. Shields, 134 Ill. 213; Chicago, etc., Co. v. Kelly, 127 Ill. 644; Chicago & A. R. Co. v. Hoyt, 122 Ill. 374; Chicago & N. W. Ry. Co. v. Snyder, 117 Ill. 388; Stafford v. Chicago B. & Q. R. Co., 114 Ill. 246; North Chicago, etc., Co. v. Johnson, 114 Ill. 64; Chicago & E. I. R. Co. v. Geary, 110 Ill. 387; Chicago & N. W. Ry. Co. v. Moranda, 108 Ill. 582; Chicago & N. W. R. Co. v. Moranda, 93 Ill. 316; Foster v. T. A. Cummings, etc., Co., 181 Ill. App. 294; Guire v. North Breese, etc., Co., 179 Ill. App. 596; Loescher v. Consolidated, etc., Co., 173 Ill. App. 530; Truty v. Spaulding, 155 Ill. App. 446; Linquist v. Hodges, 152 Ill. App. 498; Gearner v. American, etc., Co., 147 Ill. App. 79; Bennett v. Chicago C. Ry. Co., 141 Ill. App. 566; Heimberger v. St. Louis, I. M. & S. Ry. Co., 140 Ill. App. 243; Illinois, etc., Co. v. Jenco, 136 Ill. App. 561; Illinois T. R. Co. v. Chapin, 128 Ill. App. 174; Gathman v. Chicago, 127 Ill. App. 153: Illinois, etc., Co. v. Ziemkowski, 123 Ill. App. 295; Wabash R. Co. v. Thomas, 117 Ill. App. 113; Dolese, etc., Co. v. Johnson, 116 Ill. App. 212; Chicago & A. Ry. Co. v. Brooks, 115 Ill. App. 8;

Chicago P. & St. L. Ry. Co. v. Mikesell, 113 Ill. App. 148; Indiana I. & I. R. Co. v. Otstot, 113 Ill. App. 46; Illinois, etc., Co. v. Coffey, 107 Ill. App. 585; Otstot v. Indiana I. & I. R. Co., 103 Ill. App. 140; John Spry, etc., Co. v. Duggan, 80 Ill. App. 397; Illinois, etc., Co. v. Bauman, 78 Ill. App. 76; Illinois C. R. Co. v. Swisher, 74 Ill. App. 166; Chicago & A. R. Co. v. Swan, 70 Ill. App. 334; Klees v. Chicago & E. I. R. Co., 68 Ill. App. 246; Chicago & A. R. Co. v. O'Brien, 53 Ill. App. 203; Lake Erie & W. R. Co. v. Middleton, 46 Ill. App. 223.

The existence of the relation of fellow servants does not necessarily depend upon personal acquaintance alone, or on the length of time persons have worked together (Bennett v. Chicago C. Ry. Co., 243 Ill. 429; Chicago & E. I. R. Co. v. White, 209 Ill. 131; Chicago & A. Ry. Co. v. Bell, 209 Ill. 31; Chicago C. Ry. Co. v. Leach, 208 Ill. 206; Columbian Exposition v. Lehigh, 196 Ill. 622; Chicago & A. R. Co. v. Hoyt, 16 Ill. App. 243), but on the nature of the duties of the different servants and the incidents of their employment. Chicago .. E. I. R. Co. v. White, 209 Ill. 130; Chicago C. Ry. Co. v. Leach, 208 Ill. 206.

While as a general rule servants of a common master who are employed in separate and distinct departments are not as a rule fellow servants, (Chicago C. Ry. Co. v. Leach, 208 Ill. 205; Illinois, etc., Co. v. Bauman, 178 Ill. 356; Pittsburg Ft. W. & C. Ry. Co. v. Powers, 74 Ill. 345; Gathman v. Chicago, 127 Ill. App. 153), and while the mere fact that servants, of whatever department, are working together at the time of an accident is not sufficient to constitute them fellow servants (Consolidated, etc., Co. Fleischbein, 207 Ill. 600; Chicago & A. R. Co. v. O'Brien, 155 Ill. 635; Louisville E. & St. L. R. Co. v. Hawthorn, 147 Ill. 230), yet servants directly cooperating with each other in the particular business are fellow servants, although their ordinary duties are in different department, (Chicago & E. I. R. Co. v. White, 209 Ill. 129; Joliet, etc., Co. v. Shields, 146 Ill. 609; Abend v. Terre Haute & I. R. Co., 111 Ill. 211), where the work of each, whatever it may be, has for its immediate object a common end or purpose, sought to be accomplished by the united efforts of all (Abend v. Terre Haute & I. R. Co., 111 Ill. 211), and if their duties bring them into habitual association, so that they may exercise a mutual influence upon each other promotive of mutual caution. Joliet, etc., Co. v. Shields, 146 Ill. 610.

The fact that one of a number of servants is invested with power to control and direct the actions of others, does not of itself prevent such servant from being a fellow servant of those directed. Meyer v. Illinois C. R. Co., 177 Ill. 596; Westville, etc., Co. v. Schwartz, 177 Ill. 279; Gall v. Beckstein, 173 Ill. 191; Chicago & A. R. Co. v. May, 108 Ill. 298.

In England all the servants of the same master engaged in carrying forward the common enterprise, although in different departments, widely separated, or strictly subordinated to others, are to be regarded as fellow servants. Chicago & N. W. Ry. Co. v. Moranda, 93 Ill. 308.

The fact that a vice principal temporarily engages in the duties usually performed by a servant does not as a matter of law make the vice principal a fellow servant of such servant. Illinois S. Ry. Co. v. Marshall, 210 Ill. 571; Consolidated, etc., Co. v. Gruber, 188 Ill. 588; Chicago & A. R. Co. v. May, 108 Ill. 299.

A carpenter engaged in repairing an elevator in the master's buildings and another person who has occasion at times to use the elevator, but not regularly employed in such work, are not fellow servants. Jasper v. Griffin, etc., Co., 194 Ill. App. 519.

Workmen of different trades, under different foremen, such as bricklayers and carpenters, cannot be said as matter of law to be fellow servants, although working at the same time and on the same building and for a common master. Linquist v. Hodges, 248 Ill. 505.

The fact that a servant is working near other servants of the common master, by the negligence of which other servants the first servant is injured, does not as a matter of law make such other servants the fellow servants of the injured one. Lyons v. Ryerson, 242 Ill. 414.

Where a vice principal directs a servant to perform an act, and then as a servant, and not as vice principal, performs an act himself which causes injury to the servant doing the directed act, the vice principal is not, as to the act which he as a servant performs, a fellow servant with the injured one. McMahon v. Owsley, 260 Ill. 51. But the rule does not apply to negligent acts of such a vice principal while acting as a co-laborer where the injury is not the result of the exercise of the vice principal's authority. Roebling, etc., Co. v. Thompson, 229 Ill. 45; Chicago R. I. & P. Ry. Co. v. Strong, 228 Ill. 288; Baier v. Selke, 211 Ill. 516; Rogers v. Cleveland, C., C. & St. L. Ry. Co., 211 Ill. 132.

Where a master authorizes an employee to take charge and control of a certain class of workmen in carrying on some jarticular branch of his business, such employee, in governing and directing the movements of the men under his charge, in respect to that branch of the business, is not a fellow servant with the men controlled. Missouri, etc., Co. v. Dillon, 206 Ill. 154; La Salle v. Kostka, 190 Ill. 141; Fraser v. Schroeder, 163 Ill. 464; Wenona, etc., Co. v. Holmquist, 152 Ill. 590.

Where the duty of repairing appliances is committed to an engineer, the latter, in performing the duty, is not the fellow servant of those who are required to use the appliances furnished to them by the engineer, and as to his separate duty of making repairs, is not the fellow servant of those acting under his orders. Slack v. Harris, 200 Ill. 111; Morton v. Zwierzykowski, 192 Ill. 332.

A servant entrusted with the duty of supervision and inspection is not the fellow servant of those whose acts are subject to such supervision and inspection. Swisher v. Illinois C. R. Co., 182 Ill. 546.

The burden of showing the existence of the relation of fellow servants is on the defendant, although plaintiff allege the contrary in his declaration. Missouri, etc., Co. v. Dillon, 206 Ill. 155; Hartley v. Chicago & A. R. Co., 197 Ill. 446; Chicago, P. & St. L. Ry. Co. v. Mikesell, 113 Ill. App. 148.

The definition of fellow servants is a

question of law. Thompson v. Northern, etc., Co., 256 Ill. 84; Bennett v. Chicago C. Ry. Co., 243 Ill. 428; Chicago C. Ry. Co. v. Leach, 208 Ill. 202; Consolidated, etc., Co. v. Fleischbein, 207 Ill. 602; Missouri, etc., Co. v. Dillon, 206 Ill. 155; Hartley v. Chicago & A. R. Co., 197 Ill. 446; Swisher v. Illinois C. R. Co., 182 Ill. 546; Chicago & A. R. Co. v. Swan. 176 Ill. 429; Mobile & O. R. Co. v. Godfrey, 155 Ill. 81; Wenona, etc., Co. v. Holmquist, 152 Ill. 591; Mobile & O. R. Co. v. Massey, 152 Ill. 151; Lake Eric & W. R. Co. v. Middleton, 142 Ill. 556; Chicago & N. W. Ry. Co. v. Moranda, 108 Ill. 581; Indianapolis & St. L. R. Co. v. Morgenstern, 106 Ill. 220; Heimberger v. St. Louis, I., M. & S. Ry. Co., 140 Ill. App. 245; Illinois T. R. Co. v. Chapin, 128 Ill. App. 173; Wabash R. Co. v. Thomas, 117 Ill. App. 113; Indiana I. & I. R. Co. v. Otstot, 113 Ill. App. 45; Otstot v. Indiana I. & I. R. Co., 103 Ill. App. 140; Lake Erie & W. R. Co. v. Middleton, 46 Ill. App. 223; Chicago & A. R. Co. v. Hoyt, 16 Ill. App. 240.

Where the facts are not in dispute, and all reasonable minds would readily agree to the conclusions which should be drawn from the admitted facts, the question whether the relation of fellow servants exists in a given case is a question of Linquist v. Hodges, 248 Ill. 502; Bennett v. Chicago C. Ry. Co., 243 Ill. 428; Chicago R. I. & P. R. Co. v. Scrong, 228 Ill. 286; Illinois, etc., Co. v. Ziemkowski, 220 Ill. 329; Illinois S. Ry. Co. v. Marshall, 210 Ill. 573; Spring Valley, etc., Co. v. Patting, 210 Ill. 353; Chicago C. Ry. Co. v. Leach, 208 Ill. 202; Consolidated, etc., Co. v. Fleischbein, 207 Ill. 602; Illinois, etc., Co. v. Coffey, 205 Ill. 211; Slack v. Harris, 200 Ill. 112; Hartley v. Chicago & A. R. Co., 197 Ill. 447; Duffy v. Kivilin, 195 Ill. 634; Norton v. Nadebok, 190 Ill. 599; Meyer v. Illinois C. R. Co., 177 Ill. 597; Chicago & E. I. R. Co. v. Driscoll, 176 Ill. 335; Walther v. Chicago & A. R. Co., 176 Ill. App. 406; Heimberger v. St. Louis, I. M. & S. Ry. Co., 140 Ill. App. 245; Illinois, etc., Co. v. Jenco, 136 Ill. App. 561; Illinois T. R. Co. v. Chapin, 128 Ill. App. 174; Gathman v. Chicago, 127 Ill. App. 153; Wabash R. Co. v. Thomas, 117 Ill. App. 113; Chicago, P. & St. L. Ry. Co. v. Mikesell, 113 Ill. App. 148; Indiana, I. & I. R. Co. v. Otstot, 113 Ill. App. 45; Klees v. Chicago & E. I. R. Co., 68 Ill. App. 248.

The question of the existence of the relation of fellow servants is ordinarily one of fact. Linquist v. Hodges, 248 Ill. 502; Bennett v. Chicago C. Ry. Co., 243 III. 428; Chicago R. I. & P. R. Co. v. Strong, 228 Ill. 286; Illinois, etc., Co. v. Ziemkowski, 220 Ill. 329; Illinois S. Ry. Co. v Marshall, 210 Ill. 574; Spring Valley, etc., Co. v. Patting, 210 III. 353; Chicago C. Ry. Co. v. Leach, 208 III. 202; Consolidated, etc., Co. v. Fleischbein, 207 Ill. 602; Illinois, etc., Co. v. Dillon, 206 Ill. 154; Illinois, etc., Co. v. Coffey, 205 Ill. 211; Slack v. Harris, 200 Ill. 111; Hartley v. Chicago & A. R. Co., 197 Ill. 446; Frost, etc., Co. v. Smith, 197 Ill. 254; Duffy v. Kivilin, 195 Ill. 634; Norton v. Nadebok, 190 Ill. 599; Swisher v. Illinois C. R. Co., 182 Ill. 546; Westville, etc., Co. v. Schwartz, 177 Ill. 279; Chicago & A. R. Co. v. Swan, 176 Ii!. 429; Chicago & E. I. R. Co. v. Driscoll, 176 Ill. 335; Chicago & A. R. Co. v. O'Brien, 155 Ill. 632; Mobile & O. R. Co. v. Godfrey, 155 Ill. 81; Chicago & W. I. R. Co. v. Flynn, 154 Ill. 452; Wenona, etc., Co. v. Holmquist, 152 Ill. 591; Chicago & E. I. R. Co. v. Kneirim, 152 Ill. 464; Mobile & O. R. Co. v. Massey, 152 Ill. 151; Goldie v. Werner, 151 Ill. 563; Louisville E. & St. L. Ry. Co. v. Hawthorn, 147 Ill. 230; Pullman, etc., Co. v. Laack, 143 Ill. 255; Lake Erie & W. R. Co. v. Middleton, 142 Ill. 556; Chicago & N. W. Ry. Co. v. Moranda, 108 Ill. 581; Indianapolis & St. L. R. Co. v. Morgenstern, 106 Ill. 220; McGuire v. North Breese, etc., Co., 179 Ill. App. 595; Walther v. Chicago & A. R. Co., 176 Ill. App. 406; Miller v. Kenwood, etc., Co., 169 Ill. App. 410; Heimberger v. St. Louis I. M. & S. Ry. Co., 140 Ill. App. 245; Illinois T. R. Co v. Chapin, 128 Ill. App. 173; Wabash R. Co. v. Thomas, 117 Ill. App. 113; Chicago M. & St. L. Ry. Co. v. Mikesell, 113 Ill. App. 148; Indiana I. & I. R. Co. v. Otstot, 113 Ill. App. 40; Illinois, etc., Co. v. Coffey, 107 Ill. App. 586; Otstot v. Indiana I. & I. R. Co., 103 Ill. App. 140; Illinois, etc., Co. v. Bauman, 78 Ill. App. 77; Illinois C. R. Co. v. Swisher, 74 Ill. App. 168; Klees v. Chicago & E. I. R. Co., 68 Ill. App. 248; Chicago & A. R. Co. v. O'Brien, 53 Ill. App. 202; Lake Erie & W. R. Co. v. Middleton, 46 Ill. App. 222; Chicago & A. R. Co. v. Hoyt, 16 Ill. App. 240.

FELONIOUSLY.

An indictment charging that defendant "feloniously" killed a person sufficiently charges the crime of murder as defined in section 140 of divison 1 of the Criminal Code (J. & A. ¶ 3755), although the word "unlawful," used in the statute, is nowhere used in the indictment, the element of unlawfulness being included by the term used. People v. St. Clair, 244 Ill. 445.

FELONY.

Statutory Definition.

The term "felony," as used in the Criminal Code, means an offense punishable with death or by imprisonment in the penitentiary. Criminal Code div. 2 § 5 (J. & A. ¶ 3970); People v. George, 186 Ill. 126; Brewster v. People, 183 Ill. 147; Hronek v. People, 134 Ill. 146; Baits v. People, 123 Ill. 429; Lamkin v. People, 94 Ill. 504.

An offense which may be punished by imprisonment in the penitentiary or by fine, in the discretion of the jury, is not a "felony," within the meaning of that term as defined in section 5 of division 2 of the Criminal Code (J. & A. ¶ 3970). Baits v. People, 123 Ill. 429; Lamkin v. People, 94 Ill. 504.

Petit Larceny, As.

At common law petit larceny was a felony. People v. Russell, 245 Ill. 274.

FEME COVERT.

By marriage, the husband and wife are one person in law, that is, the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection and cover she performs everything, and is therefore called in our law French, a feme covert. Hoker v. Boggs, 63 Ill. 162.

FENCE.

A line of obstacle, which may be composed of any material which will present a sufficient obstruction. Allen v. Tobias, 77 Ill. 171.

FENCE OR SIMILAR STRUCTURE.

The words "fence or similar structure," within a building restriction, have no technical meaning and are not a subject for expert testimony. Wolf v. Schwill, 282 III. 189.

FERRY.

A place where persons and things are taken across a river or other stream in boats or other vessels for hire; a right to transport persons and property across a water course and land within the juisdiction granting the franchise and receive tolls or pay therefor. Einstman v. Black, 14 Ill. App. 383.

A public ferry is a public highway of a special description, and its termini must be in places where the public have rights, as, towns or vills, or highways leading to towns or vills. The right of the grantee is, in the one case, an exclusive right of carrying from town to town, in the other, of carrying from one point to the other all who are going to use the highway to the nearest town or vill to which the highway leads on the other side. Huzzey v. Field, 2 Cromp, M. & R. 442.

As Franchise.

A ferry is a franchise granted by the state and regulated by statute. Einstman v. Black, 14 Ill. App. 384.

A right conferred to land at a particular point, and secure toll for the transportation of passengers and property from that point across a stream. Mississippi, etc., Co. v. Lonergan, 91 Ill. 513; Mills v. St. Clair County, 7 Ill. 226.

Ferryman.

A ferryman in the understanding of the common law, * * * was one who had the exclusive right of transporting passengers over rivers or other water courses for hire at an established rate; and no other person could keep or employ a boat to his prejudice either at the same place, or within a limited distance, above or below him. Clarke v. State, 2 McCord (S. C.) 48.

FEUDAL LAW, OR FEODAL LAW.

A system of tenures of real property which prevailed in the countries of western Europe during the middle ages, arising from the peculiar political condition of those countries, and radically affecting the law of personal rights and of movable property.

Although the feudal system has never obtained in this country, and is long since extinct throughout the greater part of Europe, some understanding of the theory of the system is essential to an accurate knowledge of the English constitution, and of the doctrines of the common law in respect to real property. The feudal tenure was a right to lands on the condition of performing services and rendering allegiance to a superior lord. It had its origin in the military immigrations of the Northmen, who overran the Many writers falling Roman empire. have sought to trace the beginning of the system in early periods, and resemblances more or less distinct have been found in the tenures prevailing in the Roman republic and empire, in Turkey, in Hindostan, in ancient Tuscany, as well as in the system of Celtic clanship. Hallam, Mid. Ages; Stuart, Soc. in Europe; Robertson, Hist. Charles V.; Pink. Diss.; Montesq. Esp. des Lois, liv. 30, c. 2; Meyer, des Inst. Judiciaires, tom. 1, p. 4.

But the origin of the feudal system is so obvious in the circumstances under which it arose that perhaps there is no other connection between it and these earlier systems than that all are the outgrowth of political conditions somewhat similar. It has been said that the system is nothing more than the natural fruit of conquest; but the fact that the conquest was by immigrants, and that the conquerors made the acquired country their permanent abode, is an important element in the case, and in so far as other conquests have fallen short of this, the military tenures resulting have fallen short of the feudal system. The military chieftains of the northern nations allotted the lands of the countries they occupied among themselves and their followers, with a view at once to strengthen their own power and ascendency, and to provide for their followers.

Some lands were allotted to individuals as their own proper estates, and these were termed "allodial"; but, for the most part, those lands which were not retained by the chieftain he assigned to his comites, or knights, to be held by his permission, in return for which they assured him of their allegiance, and undertook for him military service.

It resulted that there was a general dismemberment of the political power into many petty nations and petty sovereignties. The violence and disorders of the times rendered it necessary both for the strong to seek followers, and for the weak to seek a protecting allegiance; and this operated on the one hand to lead the vassals to divide again among their immediate retainers the lands which they had received from the paramount lord, upon similar terms, and by this subinfeudation the number of flefs was largely increased; and the same circumstances operated on the other hand to absorb the allodial estates by inducing allodial proprietors to surrender their lands to some neighboring chieftain, and receive them again from him under feudal tenure. Every one who held lands upon a feudal tenure was bound, when called upon by his benefactor or immediate lord, to defend him, and such lord was, in turn, subordinate to his superior, and boundto defend him, and so on upwards to the paramount lord or king, who in theory of the law was the ultimate owner of all the lands of the realm. The services which the vassals were bound to render to their lords were chiefly military; but

many other benefits were required, such as the power of the lord or the good will of the tenant would sanction.

This system came to its height upon the continent in the empire of Charlemagne and his successors. It was completely established in England in the time of William the Norman and William Rufus, his son; and the system thus established may be said to be the foundation of the English law of real property, and the position of the landed aristocracy, and of the civil constitution of the realm. And when we reflect that in the middle ages real property had a relative importance far beyond that of movable property, it is not surprising that the system should have left its traces for a long time upon the law of personal relations and personal property. The feudal tenures were originally temporary, at the will of the lord, or from year to year; afterwards they came more commonly to be held for the life of the vassal; and gradually they acquired an inheritable quality, the lord recognizing the heir of the vassal as the vassal's successor in his service.

The chief incidents of the tenure by military service were:

- (1) Aids. A pecuniary tribute required by the lord in an emergency, e. g., a ransom for his person if taken prisoner, or money to make his son a knight, or to marry his daughter.
- (2) Relief. The consideration which the lord demanded upon the death of a vassal for allowing the vassal's heir to succeed to the possession; and connected with this may be mentioned primer seisin, which was the compensation that the lord demanded for having entered upon the land, and protected the possession until the heir appeared to claim it.
- (3) Fines upon alienation. A consideration exacted by the lord for giving his consent that the vassal should transfer the estate to another, who should stand in his place in respect to the services owed.
- (4) Escheat. Where, on the death of the vassal, there was no heir, the land reverted to the lord; also, where the vassal was guilty of treason; for the guilt of the vassal was demed to taint the blood,

and the lord would no longer recognize him or his heirs.

(5) Wardship and marriage. Where the heir was a minor, the lord, as a condition of permitting the estate to descend to one who could not render military service, assumed the guardianship of the heir, and, as such, exercised custody both of his person and of the property, without accounting for the profits, until the heir, if a male, was twenty-one and could undertake the military services, or, if a female, until she was of a marriageable age, when, on her marriage, her husband might render the services. The lord claimed, in virtue of his guardianhip, to make a suitable match for his ward, and if wards refused to comply they were mulcted in damages.

Feudal tenures were abolished in England by St. 12 Car. II. c. 24; but the principles of the system still remain at the foundation of the English and American law of real property. Although in many of the states of the United States all lands are held to be allodial, it is the theory of the law that the ultimate right of property is in the state; and in most of the states escheat is regulated by stat-"The principles of the feudal system are so interwoven with every part of our jurisprudence," says Tilghman, C. J., "that to attempt to eradicate them would be to destroy the whole." 3 Serg. & R. (Pa.) 447; 9 Serg. & R. (Pa.) 333. "Though our property is allodial," says Gibson, C. J., "yet feudal tenures may be said to exist among us in their consequences and the qualities which they originally imparted to estates; as, for instance, in precluding every limitation founded on any abeyance of the fee." 3 Watts (Pa.) 71; 1 Whart. (Pa.) 337; 7 Serg. & R. (Pa.) 188; 13 Pa. St. 35.

Many of these incidents are rapidly disappearing, however, by legislative changes of the law.

The principles of the feudal law will be found in Litt. Ten.; Wright, Ten.; 2 Bl. Comm. c. 5; Dlr. Feud. Prop.; Sullivan, Lect.; Book of Fiefs; Spelman, Feuds; Cruise, Dig.; Le Grand Coutumier; the Salic Laws; the Capitularies; Les Establissements de St. Louis; Assise de Jerusalem; Poth. des Fiefs; Merlin, Repert.; Dalloz, Dict.; Guizot, Hist. de France, Essai 5.

The principal original collection of the feudal law of continental Europe is a digest of the twelfth century,—feudorum consuetudines,—which is the foundation of many of the subsequent compilations. The American student will perhaps find no more convenient source of information than 2 Sharswood, Bl. Comm. 43, and Greenl. Cruise, Dig. Introd.

FIAT.

An order of a judge or of an officer whose authority, to be signified by his signature, is necessary to authenticate the particular acts. A short order or warrant of the judge, commanding that something shall be done. See 1 Tidd, Prac. 100, 108.

FIAT JUSTITIA.

Let justice be done. Words formerly written by the king at the top of a petition for a warrant to bring a writ of error in parliament, signifying his assent. Jacob; Dyer, 375; Staund. Prerog. 22.

FICTITIOUS ACTION.

A suit brought on pretense of a controversy, when no such controversy in truth exists. Such actions have usually been brought on a pretended wager, for the purpose of obtaining the opinion of the court on a point of law. Courts of justice were constituted for the purpose of deciding really existing questions of right between parties; and they are not bound to answer impertinent questions which persons think proper to ask them in the form of an action on a wager. 12 East, 248. Such an attempt has been held to be a contempt of court; and Lord Hardwicke in such a case committed the parties and their attorneys. Lee temp. See, also, Comb. 425; 1 Hardw. 237. Coke, 83; 6 Cranch (U. S.) 147, 148.

FICTITIOUS OR NON-EXISTING PERSON.

The words "fictitious or non-existing person" in a statute providing that where the payee of a bill or check is such a person the bill may be treated as payable to bearer are not to be construed as meaning a "fictitious or non-existing person to the knowledge of the drawer." Per Wills, J., in Clutton v. Attenborough (1895) 2 Q. B. 306 (affirmed on appeal [1895] 2 Q. B. 707), citing Vagliano's Case (1891) A. C. 107.

FICTITIOUS PARTY.

Where a suit is brought in the name of one who is not in being, or of one who is ignorant of the suit, and has not authorized it, it is said to be brought in the name of a fictitious plaintiff. To bring such a suit is deemed a contempt of court. 4 Bl. Comm. 133.

FICTITIOUS PAYEE.

A fictitious payee is where none in fact exists. Edgerton v. Preston, 15 Ill. App. 25.

Making a note payable to the "Garden City Veneer Mills" does not make the payee of the note fictitious where the quoted expression is the name under which a partnership is doing business. Edgerton v. Preston, 15 Ill. App. 25.

FIDEI COMMISSARIUS.

(Law Lat.) In civil law. One who has a beneficial interest in an estate which, for a time, is committed to the faith or trust of another. This term has nearly the same meaning as cestui que trust has in the common law. 1 Greenl. Cruise, Dig. 295; Story, Eq. Jur. § 966; Bouv. Inst. Index.

Fidel commissary and fide commissary, anglicized forms of this term, have been proposed to take the place of the phrase cestui que trust, but do not seem to have met with any favor.

According to Du Cange, the term was sometimes used to denote the executor of a will.

FIDELITY INSURANCE.

A subsidiary species of insurance contract. People v. Potts, 264 Ill. 526.

FIDUCIARY.

One who holds a thing in trust for another. Svanoe v. Jurgens, 144 Ill. 513.

Holding or held or founded in trust; in confidence. Svanoe v. Jurgens, 144 Ill. 513.

FIDUCIARY CAPACITY.

Bankruptcy Act of 1841.

The Bankruptcy Act of 1841, providing that discharges in bankruptcy shall not affect debts created, inter alia, while the bankrupt was acting in any "fiduciary capacity," refers, by the quoted expression, to technical trusts and not to trusts which the law implies from a contract. Svanoe v. Jurgens, 144 Ill. 513; Wilson v. Kirby, 88 Ill. 571.

One who receives money to buy land for another is acting in a "fiduciary capacity," within the meaning of the Bankruptcy Act of 1841, relating to the effect of discharges in bankruptcy under the act. Matteson v. Kellogg, 15 Ill. 550.

FIDUCIARY RELATION.

That relation existing between parties where one holds the character of a trustee or a character analogous thereto, such as an agent, guardian, or the like, and the person stands in such a position that he has rights and powers which he is bound to exercise for the benefit of the other person. Bishop v. Hilliard, 227 Ill. 387.

Courts of equity have carefully refrained from defining the particular instances of fiduciary relations in such a manner that other and perhaps new cases might be excluded. It is settled by an overwhelming weight of authority that the principle extends to every possible case in which fiduciary relation exists as a fact, in which there is confidence reposed on one side and the resulting superiority and influence on the other. The relations and duties involved in it need not be legal. It may be moral.

social, domestic or merely personal. The fiduciary relation exists between parties where there is a relation of trust and confidence between them-that is, where confidence is reposed by the one party, and the trust accepted by the other. The term fiduciary or confidential relation is a very broad one. It exists and relief is granted in all cases in which influence has been acquired and abused, and in which confidence has been reposed and betrayed. The origin of the confidence and the source of the influence are immaterial. The rule embraces both technical fiduciary relations and those informal relations which exist whenever one man trusts in and relies upon another. The only question is, that such relation in fact exists. MacNeil's Ill. Evidence 542.

"Undue Influence" Distinguished.

The expression "fiduciary relation" does not imply mental weakness, old age, ignorance, pecuniary distress or the like, or undue influence, except in so far as undue influence, or the ability to exercise such influence, is implied in the definition of a "fiduciary relation," the two doctrines not being the same. Beach v. Wilton, 244 Ill. 423. To the same effect see Thomas v. Whitney, 186 Ill. 230.

Scope of Term.

Courts of equity have refused to set any bounds to the circumstances out of which a fiduciary relation may spring. Mors v. Peterson, 261 Ill. 536; Beach v. Wilton, 244 Ill. 422.

The expression "fiduciary relation" is one of broad meaning, including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another. Kern v. Beatty, 267 Ill. 134; Beach v. Wilton, 244 Ill. 422; Stahl v. Stahl, 214 Ill. 138; Mayrand v. Mayrand, 194 Ill. 48; Thomas v. Whitney, 186 Ill. 231.

The term "fiduciary relation" includes all legal relations, such as guardian and ward, attorney and client, principal and agent and the like. Mors v. Peterson, 261 Ill. 536; Bishop v. Hilliard, 227 Ill. 386; Irwin v. Sample, 213 Ill. 167; Al-

precht v. Hunecke, 196 Ill. 131; Roby v. Colehour, 135 Ill. 337.

The term "fiduciary relation" extends to every possible case where a fiduciary relation exists in fact, and in which there is a confidence reposed on one side, and resulting superiority and influence on the other. Mors v. Peterson, 261 Ill. 536: Beach v. Wilton, 244 Ill. 422; Hensan v. Cooksey, 237 Ill. 626; Irwin v. Sample, 213 Ill. 167; Walker v. Shepard, 210 Ill. 110; Roby v. Colehour, 135 Ill. 338. To the same effect see Rickman v. Meier, 213 Ill. 516.

What Constitutes.

The origin of the confidence and the source of the influence relied on to establish a fiduciary relation are immaterial. (Kern v. Beatty, 267 Ill. 134; Beach v. Wilton, 244 Ill. 422; Stahl v. Stahl, 214 Ill. 138; Irwin v. Sample, 213 Ill. 167; Mayrand v. Mayrand, 194 Ill. 48; Thomas v. Whitney, 186 Ill. 230) and the relation need not be legal (Mors v. Peterson, 261 Ill. 536; Beach v. Wilton, 244 Ill. 422; Hensan v. Cooksey, 237 Ill. 626; Irwin v. Sample, 213 Ill. 167; Walker v. Shepard, 210 Ill. 110; Roby v. Colehour, 135 Ill. 338) but may be either moral, social, domestic, or merely personal. Mors v. Peterson, 261 Ill. 536; Beach v. Wilton, 244 Ill. 422; Hensan v. Cooksey, 237 Ill. 626; Irwin v. Sample, 213 Ill. 167; Walker v. Shepard, 210 Ill. 110; Roby v. Colehour, 135 Ill. 338.

A "fiduciary relation" exists in all cases in which influence has been acquired and abused, or in which confidence has been reposed and betrayed. Kern v. Beatty, 267 Ill. 134; Noble v. Noble, 255 Ill. 635; Beach v. Wilton, 244 Ill. 422; Stahl v. Stahl, 214 Ill. 138; Irwin v. Sample, 213 Ill. 167; Thomas v. Whitney, 186 Ill. 231.

A "fiduciary relation" exists between parties when there is a relation of trust and confidence between them,—that is, where confidence is reposed by one party and accepted by the other. Beach v. Wilton, 244 Ill. 422. To a similar effect see Morgan v. Owens, 228 Ill. 603.

A "fiduciary relation" exists where the business of one is entrusted to another in such a way as to render the principal liable to be imposed on by the agent. Bishop v. Hilliard, 227 Ill. 387.

A fiduciary relation does not arise, as matter of law, merely from the fact that parties are tenants in common. Calkins v. Worth, 215 Ill. 84; Albrecht v. Hunecke, 196 Ill. 131.

A fiduciary relation does not necessarily exist between parties merely because of the fact that they are brother and sister. Albrecht v. Hunecke, 196 Ill. 131.

The question whether a fiduciary relation exists between parties, so that confidence is reposed by one in the other, is a question of fact depending on all the facts and circumstances of the particular case. Albrecht v. Hunecke, 196 Ill. 131.

FIEF.

"A flef was an organically complete brotherhood of associates whose proprietary and personal rights were inextricably blended together. It had much in common with an Indian village community and much in common with a Highland But still it presents some phenomena which we never find in associations which are spontaneously formed by beginners in civilization. True archaic communities are held together not by express rules, but by sentiment, or, we should perhaps say, by instinct, and newcomers into the brotherhood are brought within the range of this instinct by falsely pretending to share in the blood-relationship from which it naturally springs. But the earlier feudal communities were neither bound together by mere sentiment nor recruited by a faction. The tie which united them was contract, and they obtained new associates by contracting with them. The relation of the lord to the vassals had originally been settled by express engagement, and a person wishing to engraft himself on the brotherhood by commendation or infeudation came to a distinct understanding as to the conditions on which he was to be ad-It is therefore the sphere ocmitted. cupied in them by contract which principally distinguishes the feudal institutions from the unadulterated usages of primitive races." Maine, Suc. L., 365.

FILCH.

The primary and ordinary meaning of the word "filch" is to steal, and carries with it also the idea of secrecy. People v. Fuller, 238 Ill. 124 (aff'g 141 Ill. App. 378).

To steal privily; to pilfer; to steal, especially in a small, sly way; to take from another in an underhand way, as by violation of trust or good faith; to thieve; to rob; to purloin. People v. Fuller, 238 Ill. 124 (aff'g 141 Ill. App. 378).

The term "filch" is ordinarily applied to things of little value. People v. Fuller, 141 Ill. App. 378.

FILE MARK.

The certificate of the officer where an instrument has been filed, and the legal evidence of the fact of such filing. Mc-Chesney v. People, 174 Ill. 50.

FILE.

A thread, string, or wire upon which writs and other exhibits in courts and offices are fastened or filed for the more safe keeping and ready turning to the same. Spelman; Cowell; Tomlins. Papers put together and tied in bundles. A paper is said also to be filed when it is delivered to the proper officer, and by him received to be kept on file. 13 Viner, Abr. 211; 1 Litt. 113; 1 Hawk. P. C. 7, 207; Gorham v. Summers, 25 Minn. 86.

A file is a record of the court. Holman v. Chevalier, 14 Texas 39.

Papers put together and tied in bundles, are called a file. Fanning v. Fly, 2 Coldw. (Tenn.) 488.

FILED.

Section 6 of the Limited Partnerships Act (J. & A. $\P7228$), requiring certificates of limited partnerships made in accordance with section 4 of the same act (J. & A. $\P7226$) to be "filed" in the office of the clerk of the county court, is complied with only where the certificate is delivered to the clerk and left among the files of his office, and it is immaterial

that an employe, intending to file in accordance with the act, delivers the certificate to a subordinate of the clerk who, misunderstanding the intention of the employe, fails to file it, but attaches a certificate of the authority of the magistrate taking the affidavit, and returns it to the employe, who takes the certificate away again. Pfirmann v. Henkel, 1 Ill. App. 150.

The object of the requirement of section 6 of the Limited Partnerships Act (J. & A. ¶ 7228) that certificates of limited partnerships under section 4 of the act (J. & A. ¶ 7226) be "filed" in the office of the clerk of the county court is thereby to place among the files and records of a public office, subject at all times to the inspection of the parties interested, exact and authentic information of the precise limitations which the special partner seeks to place upon his partnership liability. Pfirmann v. Henkel, 1 Ill. App. 150.

The word file is derived from the Latin word "filum," which signifies a thread; and its present application is drawn from the ancient practice of placing papers upon a thread, or wire, for the more safe keeping and ready turning to the same. The origin of the term indicates very clearly, that the filing of a paper can only be effected by bringing it to the notice of the officer, who anciently put it upon the string or wire. Accordingly, we find that filing a paper is now understood to consist in placing it in the proper official custody, on the part of the party charged with the duty of filing the paper, and the making of the appropriate endorsement by the officer. Phillips v. Beene's Exr., 38 Ala. 251.

"'Filed,' held to be included in return of non est inventus. Hunter v. Caldwell, Easter Term, 1847" (Dwar. 673).

A paper is said to be filed, when it is delivered to the proper officer, and by him received, to be kept on file. Peterson v. Taylor, 15 Georgia 484.

FILED AS PART OF THE REC-ORDS OF SAID COURT.

Section 186 of the Revenue Act (J. & A. ¶ 9405), requiring that a copy of the

certificate of publication of the delinquent list be presented to the county court and "filed as part of the records of said court," is not complied with by a filing with the county clerk, such a filing not being in the county court. McCraney v. Glos, 222 Ill. 630.

FILED FOR RECORD.

The expression "filed for record," used in section 31 of the Conveyances Act (J. & A. ¶ 2263), relating to deeds and other instruments as notice to subsequent purchasers, refers to a mere filing for purposes of record, after which the instrument may properly be withdrawn from the files. Pfirmann v. Henkel, 1 Ill. App. 152.

An instrument is "filed" for record when it is deposited in the proper office, with a person in charge thereof, with directions to record it. Edwards v. Gravd, 121 Cal. 256, citing Tregambo v. Comanche & Co., 57 Cal. 501.

FILIATE.

To declare whose child a bastard is. 2 W. Bl. 1017.

FILING.

The term "filing" and the verb "to file" include the idea that the paper is to remain in its proper order on file in the office. A paper is said to be filed when it is delivered to the proper officer and by him received, to be kept on file. Bergeron v. Hobbs, 96 Wis. 643.

FILING A PAPER.

"Filing a paper," ex vi termini, means placing and leaving it among the files. Dorn v. Smith, 106 Ill. App. 93; Pfirmann v. Henkel, 1 Ill. App. 152.

FILING OF A PAPER.

To constitute the "filing of a paper" in a cause it must be placed in the hands and under the control of the clerk—must pass into his exclusive custody and remain

within his power. Coles v. Terrell, 162 Ill. 169; Hamilton v. Beardslee, 51 Ill. 480; Schoeler v. Rockford, 160 Ill. App. 221.

In modern usage, "filing a paper" consists in placing it in the proper official's custody by the party charged with this duty and the making of the proper indorsement by the officer. Medland v. Linton, 60 Neb. 255.

FILIUS.

a child. dis-(Lat.) A son; As tinguished from heir, filius is a term of nature, haeres a term of law. Powell, Dev. 311. In the civil law the term was used to denote a child generally. Calv. Lex.; Vicat. Its use in the phrase nullius filius would seem to indicate a use in the sense of legitimate son, a bastard being the legitimate son of nobody; though the word is usually rendered a son, whether legitimate or illegitimate. Vicat.

Fillium eum definimus qui ex viro et uxore ejus nascitur, we define him to be a son who is born of a man and his wife. Dig. 1. 6. 6. Praesumitur quis esse filius eo quod nascitur ex uxore, one is presumed to be another's child because he is born of his wife. Bracton, fols. 6, 88. An alien may have a son, but no alien can have an heir. Id.

A distinction was sometimes made, in the civil law, between filli and liberi; the latter word including grandchildren (nepotes), the former not. Inst. 1. 14. 5. But according to Paulus and Julianus, they were of equally extensive import. Dig. 50. 16. 84; Dig. 50. 16. 201.

FILUM AQUAE.

(Lat. a thread of water.) This may mean either the middle line or the outer line. Altum filum denotes high-water mark. Blount. Filum is, however, used almost universally in connection with squae to denote the middle line of the stream. Medium filum is sometimes used with no additional meaning. See 4 Pick. (Mass.) 468; 24 Pick. (Mass.) 344; 3 Caines (N. Y.) 319; 6 Cow. (N. Y.) 579;

5 Wend. (N. Y.) 423; 26 Wend. (N. Y.) 404; 20 Johns. (N. Y.) 91; 4 Hill (N. Y.) 369; 4 Mason (U. S.) 397; 2 N. H. 369; 1 Halst. (N. J.) 1; 2 Conn. 481; 3 Rand. (Va.) 33; 8 Me. 253; 1 Ired. (N. C.) 535; Angell, Watercourses, § 11; 3 Dane, Abr. 4; Jacob; 2 Washb. Real Prop. 445.

FILLING.

The word "filling," when used in connection with the improvement of the streets, has a settled and well known meaning in that city among engineers and street contractors, and means to raise the surface of the roadway to be improved by using clay, earth, sand, or other suitable material free from animal or vegetable substances, or other offensive materials. Under such proof the ordinance was not void for uncertainty and indefiniteness, in respect to the character of the work proposed to be done. Levy v. Chicago, 113 Ill. 653.

FINAL.

Last; conclusive; pertaining to the end. Saylor v. Duel, 236 Ill. 432.

FINAL CERTIFICATE.

A final certificate issued by an architect is one which is issued after a job is done and which finally determines the rights of the parties as to money and disputes. Johnson v. Hogg, 202 Ill. App. 253.

FINAL DECREE.

What Constitutes.

One which fully decides and finally disposes of the entire merits of the case. De Grasse v. H. W. Gossard Co., 236 III. 78; Crowe v. Kennedy, 224 III. 530; Gray v. Ames, 220 III. 254; Rosenthal v. Board of Education, 141 III. App. 139; Wheelberger v. Knights, 71 III. App. 333. To the same effect see Bonnell v. Campbell, 143 III. App. 252; Meyer v. Decatur, 134 III. App. 386; People v. Severson, 113 III. App. 497; Lewis v. New, etc., Co., 100 III. App. 418; Lee v. Yanaway, 52 III. App. 25.

A decree is final which determines and definitely settles the rights of the contending parties, relatively, with reference to the subject matter of the controversy, that is, when the relative quantity of the interest of each of the parties is judicially fixed so that nothing remains but to carry out that adjudication in detail, as, for instance, by reference to a master to take evidence and report upon an accounting, between the parties, according to some basis fixed by the decree, or to ascertain the money equivalent of each of the interests, or to make a sale for a division of the proceeds. Rice v. Dougherty, 148 Ill. App. 378.

Where a decree finally decides and disposes of the whole merits of the controversy, reserving no questions and requiring no further directions for the future judgment of the court as between the parties and over the same subject matter, it is a final decree. Adamski v. Wieczorek, 66 Ill. App. 584.

Determination of Finality.

The question whether a decree is final or not is to be determined by its contents and its substance and effect, and not by the intention of the chancellor, or by the fact that he chooses to call the decree "interlocutory." Rice v. Dougherty, 148 Ill. App. 379. To the same effect see Loughlin v. U. S., etc., Co., 118 Ill. App. 41.

Disposition as to All Parties.

A decree dismissing a bill as to some of the parties and leaving it pending as to others is not a final decree, (Pain v. Kinney, 175 Ill. 266; Dreyer v. Goldy, 171 Ill. 436; Bucklen v. Chicago, 166 Ill. 454; Gunn v. Donoghue, 135 Ill. 481; Hutchinson v. Ayres, 117 Ill. 567; International Bank v. Jenkins, 109 Ill. 224; Thompson v. Follansbee, 55 Ill. 428; Dillon v. Groswold, 118 Ill. App. 631; Loughlin v. U. S., etc., Co., 118 Ill. App. 40; Maley v. Lake Erie & W. R. Co., 84 Ill. App. 57) and the same is true of a judgment in an action on a bond, where all obligors are sued, but which leaves the case pending and undisposed of as to the principal and one of the sureties. People v. Jamison, 141 Ill. App. 409.

Necessity for Approval and Filing.

A decree is not final until it is approved by the chancellor and filed for record. Horn v. Horn, 234 Ill. 274.

Decree Not Disposing of Entire Controversy.

Where a demurrer to a bill for an account is sustained and the bill dismissed, and the complainant later files a bill of review, to which defendant demurs, but is overruled, and he abiding his demurrer, a decree is made taking the bill of review as confessed, the former decree set aside, and defendant ordered to answer the original bill, such last named decree is not a final decree. Gardner v. Dwelling House, etc., Co., 44 Ill. App. 156.

A decree in a separate maintenance proceeding finding complainant entitled to the relief prayed, but continuing the cause to hear evidence as to the amount defendant should pay without finally adjudicating that question, is not a final decree. Hunter v. Hunter, 100 Ill. 521.

Need Not Be Last Order.

A final decree is not necessarily the last order in a case as orders sometimes follow merely for the purpose of carrying out or executing the matters which the decree has determined. Klein v. Independent, etc., Co., 231 Ill. 603; Rhodes v. Rhodes, 172 Ill. 189; Ames v. Ames, 148 Ill. 335; Allison v. Drake, 145 Ill. 510; Myers v. Manny, 63 Ill. 213; Rosenthal v. Board of Education, 141 Ill. App. 140; Wheelberger v. Knights, 71 Ill. App. 333.

Retention of Cause.

A decree retaining the cause for the future determination of matters of substantial controversy between the parties is not final. Rosenthal v. Board of Education, 239 Ill. 36; Barber v. Tolman, 176 Ill. App. 128; Rosenthal v. Board of Education, 141 Ill. App. 138; Brodhead v. Minges, 99 Ill. App. 439.

Setting Aside Judgment at Law.

A decree setting aside judgments rendered at law is a final decree, (Hilt v. Heimberger, 235 Ill. 245) but is other-

wise where the judgment is set aside by the court which granted it, although erroneously. Walker v. Oliver, 63 Ill. 200.

Matter Distinct from General Subject of Litigation.

A decree dealing with a matter distinct from the general subject of the litigation, and finally disposing of all questions involved in such matters is a final decree, Mutual, etc., Ass'n v. Smith, 169 Ill. 268) as for example, where the court allows a motion for a new trial, such allowance being a final determination of the issues involved in the application. Cook County v. Calumet, etc., Co., 131 Ill. 512, but see contra Williams v. La Valle, 64 Ill. 111.

Refusing Bill of Review.

A refusal to grant leave to file a bill of review on the ground of newly discovered evidence, or an order striking a petition for such leave, is a final determination of the sufficiency of such evidence. Adamski v. Wieczorek, 170 Ill. 375.

Ruling on Demurrer.

A decree sustaining a demurrer to a cross bill, (Fleece v. Russell, 13 III. 33) or to the bill, although directed to the very elements of the cause of action, (Knapp v. Marshall, 26 Ill. 63; Meyer v. Decatur, 134 Ill. App. 386; People v. Severson, 113 Ill. App. 497) or to a petition for mandamus (Benevolent, etc., Department v. Farwell, 5 Ill. App. 241) are none of them final, nor is an order overruling a demurrer to the bill (Hayes v. Caldwell, 10 Ill. 35) or dissolving an injunction, where the bill is not dismissed, and where relief is prayed for other than the injunction. Pentecost v. Magahee, 5 Ill. 327. To the same effect see Cornelius v. Coons, 1 Ill. 37.

Reference to Master as Affecting.

Where a decree is a final adjudication of the substantial rights of the parties, it is none the less final because it refers the cause to a master for some particular purpose in connection with the execution of the decree. Johnson v. Northern, etc., Co., 265 Ill. 266; De Grasse v. H. W. Gossard Co., 236 Ill. 76; Klein v. Inde-

pendent, etc., Co., 231 Ill. 603; Piper v. Piper, 231 Ill. 77; Crowe v. Kennedy, 224 Ill. 530; Gray v. Ames, 220 Ill. 254; Stahl v. Stahl, 220 Ill. 190; Rhodes v. Rhodes, 172 Ill. 189; Allison v. Drake, 145 Ill. 110; Barber v. Tolman, 176 Ill. App. 128.

Dismissing Bill.

A decree dismissing a bill for divorce on hearing is a final decree. People v. Case, 241 Ill. 287.

Appointment or Removal of Receiver.

A decree appointing or removing a receiver is not a final decree, since such a decree does not determine any right or affect the title of either party to the property. Vandalia v. St. Louis V. & T. H. R. Co., 209 Ill. 80; Chicago, etc., Works v. Illinois, etc., Co., 153 Ill. 15; Farson v. Gorham, 117 Ill. 140; Coates v. Cunningham, 80 Ill. 468; Lewis v. New, etc., Co., 100 Ill. App. 419.

Foreclosure Decree.

A decree in a foreclosure proceeding finding the debt to be due and unpaid and that the lien of the mortgage attached to the land and directing it to be paid within the designated period is a final decree although the decree also directs that in default of payment the land be sold by the master and report thereof made at the next term of court. Rhodes v. Rhodes, 172 Ill. 189. To the same effect see Chicago & N. W. Ry. Co. v. Chicago, 148 Ill. 153; Myers v. Manny, 63 Ill. 213.

A decree foreclosing a mortgage and decreeing a sale of the mortgaged premises is a final decree, and this even though the master is ordered to make a report of the sale. Kirby v. Runals, 140 Ill. 295.

Conditional Deficiency Decree.

A conditional deficiency decree is not final. Huggins v. Gottschalk, 195 Ill. App. 65.

Final Disposition.

Such a disposition that nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation is required or can arise on the matter. It is such an award that the party against whom it is made can perform or pay it, without any further ascertainment of rights or duties. Colcord v. Fletcher, 50 Me. 401.

Final Hearing.

The words "final hearing" have long been used to designate the trial of an equity case upon the merits, as distinguished from the hearing of any preliminary questions arising in the cause, and which are termed interlocutory. Akerly v. Vilas, 24 Wis. 171.

FINAL JUDGMENT.

What Constitutes.

Such a judgment or decision as settles the rights of the parties in respect to the subject matter of the suit, and concludes them until it is reversed or set aside. Exparte Thompson, 93 Ill. 90; Woodside v. Woodside, 21 Ill. 207; Keel v. Bently, 15 Ill. 228; Hayes v. Caldwell, 10 Ill. 35.

One that finally disposes of the rights of the parties, either upon the entire controversy, or upon some definite and separate branch thereof. Bailey v. Conrad, 271 Ill. 295; Park Ridge v. Murphy, 258 Ill. 367. To a similar effect see Allison v. Drake, 145 Ill. 510; Myers v. Manny, 63 Ill. 213; Rosenthal v. Board of Education, 141 Ill. App. 140.

A final judgment is one finally determining the rights of the parties with reference to the particular suit, and not necessarily their rights with reference to the subject matter of the litigation. Mutual, etc., Ass'n v. Smith, 169 Ill. 265; Cook County v. Calumet, etc., Co., 131 Ill. 512.

A judgment which disposes of, or finds, all the issues in the cause in favor of defendant and awards costs against plaintiff is a final judgment although not in strictly proper legal form. Wenom v. Fossick, 213 Ill. 72.

A judgment, decree, sentence or order passed by a court of competent jurisdiction which settles or determines a contested right, or which fixes a duty upon one of the parties litigant, is final as to the parties themselves and all persons claiming under them. Kirby v. Runals, 37 Ill. App. 192.

It is the termination of the particular action which marks the finality of a judgment. Vickers, J., dissenting opinion Cramer v. Commercial, etc., Ass'n, 260 Ill. 525; Mutual, etc., Ass'n v. Smith, 169 Ill. 265; Swanson v. Smith, 185 Ill. App. 444.

A judgment which puts an end to the suit, at least until it is reversed or set aside. Scholfield, J., dissenting opinion Cook County v. Calumet, etc., Co., 131 Ill. 518.

The phrase "final judgment" has two meanings. It may indicate the judgment which, if not reversed or modified, will end the litigation in which it is entered, but which may be reversed or modified by a superior tribunal, and which therefore gives to the party aggrieved the right to invoke the action of the higher court. The phrase may also mean that judgment which in fact does end the litigation, by an order of the court in which the cause was begun, or of some higher court to which it is carried, entered in the cause itself, and by virtue of the process by which the suit was commenced. Russia Cement Co. v. Le Page Co., 174 Mass. (1899) 349.

"I think we ought to give to the words 'final judgment' * * their strict and proper meaning, i. e., a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established, unless there is something to shew an intention to use the words in a more extended sense." Lord Esher, M. R., in Onslow v. Inland Revenue Comrs., 25 Q. B. D. 466, quoting Cotton, L. J., in Exparte Chinery, 12 Q. B. D. 342.

"The mere fact that the judgment puts an end to and finally settles the controversy which arose in the particular proceeding, is not of itself sufficient to make it a final and conclusive judgment upon which an action may be maintained in the courts of this country, when such judgment has been pronounced in a foreign court

in order to establish that such a judgment has been pronounced it must be shewn that in the court by which it was pronounced it conclusively, finally, and forever established

the existence of the debt of which it is sought to be made conclusive evidence in this country, so as to make it res judicata between the parties." Per Lord Herschell in Nouvion v. Freeman, 15 App. Cas. 1.

Blackstone's Definition.

Such a judgment as at once ends the action by declaring either that the plaintiff has or has not the right to the remedy for which he sues. Vickers, J., dissenting opinion Cramer v. Commercial, etc., Ass'n, 260 Ill. 524.

Elements of Finality.

To be final a judgment must settle and conclude the rights involved in the action, and deny to the party the means of further prosecuting or defending the suit. Vickers, J., dissenting opinion Cramer v. Commercial, etc., Ass'n, 260 Ill. 524; Swanson v. Smith, 185 Ill. App. 444.

A judgment or decree is final only where it terminates the litigation between the parties on the merits, so that on affirmance the court below need only proceed with its execution, (Rosenthal v. Board of Education, 239 Ill. 36; Carter, J., dissenting opinion De Grasse v. H. W. Gossard Co., 236 Ill. 81; Stahl v. Stahl, 220 Ill. 190; Glos v. Clark, 199 Ill. 149; Callahan v. Ball, 197 Ill. 323; Rhodes v. Rhodes, 172 Ill. 190; Gade v. Forest Glen, etc., Co., 158 Ill. 43; Chicago & N. W. Ry. Co. v. Chicago, 148 Ill. 153; Dow v. Blake, 148 Ill. 85; Chicago, etc., Co. v. Auditor of Public Accounts, 100 Ill. 483; Barber v. Tolman, 176 Ill. App. 128; Rosenthal v. Board of Education, 141 Ill. App. 139; Dillon v. Griswold, 118 Ill. App. 631; Lewis v. New, etc., Co., 100 Ill. App. 418; Brodhead v. Minges, 99 Ill. App. 440; Sweet v. Merki, 27 Ill. App. 246) and when the party in whose favor it is rendered is entitled to have it carried immediately into execution. Carter, J., dissenting opinion De Grasse v. H. W. Gossard Co., 236 Ill. 81; Stahl v. Stahl, 220 Ill. 190; Chicago & N. W. Ry. Co. v. Chicago, 148 Ill. 153.

Form as Affecting.

Although technically a judgment ought, in order to be final, to contain a state-

ment that "it is considered by the court that the plaintiff take nothing by the writ, and that defendant go hence without day," or words of similar import disposing of the whole matter of the litigation, (Wenom v. Fossick, 213 III. 71; Olson v. Whiffen, 175 Ill. App. 184; Fowley v. Thompson, 173 Ill. App. 335; Bonnell v. Campbell, 143 Ill. App. 252; People v. Severson, 113 Ill. App. 497; Cutting-Kaestner Co. v. Goldberg, 107 Ill. App. 593) the form of the judgment is immaterial, and it is final if it in some form shows distinctly and not inferentially that the matters in the record have been finally disposed of in favor of one of the litigants, or that the rights of the parties in litigation have been finally adjudicated. Morgan Hastings Co. v. Gray, etc., Co., 108 Ill. App. 99; Cutting-Kaestner Co. v. Goldberg, 107 Ill. App. 593.

Where the only record of a judgment in the trial court is the entry "and judgment on the verdict for" a named sum, there is no final judgment. Metsger v. Morley, 184 Ill. 85.

Necessity for Hearing on Merits.

It is not necessary, in order to constitute a final judgment, that it should be the result of a hearing on the merits, and a judgment of non-suit or dismissal, or on demurrer, may be final. Vickers, J., dissenting opinion Cramer v. Commercial, etc., Ass'n, 260 Ill. 524; Mutual, etc., Ass'n v. Smith, 169 Ill. 265.

Orders Affecting Judgments by Default or on Confession.

A judgment denying a motion to set aside a default and vacate a judgment in order to allow a defense is a final judgment, (Park Ridge v. Murphy, 258 Ill. 366) and the same is true of the denial of a motion to vacate a judgment by confession to let in a defense, (Lake v. Cook, 15 Ill. 356) but where the motion is allowed, the order allowing it is not final. Park Ridge v. Murphy, 258 Ill. 366.

Order Awarding Costs.

An order awarding costs to a party without more is not a final judgment, (Wenom v. Fossick, 213 Ill. 71; Olson v.

Whiffen, 175 Ill. App. 184; Fowley v. Thompson, 173 Ill. App. 335; Bonnell v. Campbell, 143 Ill. App. 252; Meyer v. Decatur, 134 Ill. App. 386; Dunkelbarger v. McFerren, 134 Ill. App. 395; People v. Severson, 113 Ill. App. 497; Cutting-Kaestner Co. v. Goldberg, 107 Ill. App. 593; Lee v. Yanaway, 52 Ill. App. 25) since the costs are but an incident to a final judgment. Meyer v. Decatur, 134 Ill. App. 386; People v. Severson, 113 Ill. App. 498; Cutting-Kaestner Co. v. Goldberg, 107 Ill. App. 593; Lee v. Yanaway, 52 Ill. App. 25.

Interlocutory Orders.

An order striking a cause from the trial docket, or a subsequent order refusing to reinstate it upon the docket is not a final order. Morgan Hastings Co. v. Gray, etc., Co., 108 Ill. App. 99; Cutting-Kaestner Co. v. Goldberg, 107 Ill. App. 593.

Appellate Court Judgments.

Where a mortgagee obtains a decree of foreclosure against one who is afterwards adjudged a bankrupt, and where on a writ of error by the assignee in bankruptcy to reverse the decree the mortgagee pleads the bar of the statute of limitations provided by the Bankruptcy Act of 1867, a judgment of the Appellate Court sustaining a demurrer to the plea, reversing the decree below, and remanding the cause is a final judgment, since the writ of error is a new suit, which is finally disposed of by the judgment. International Bank v. Jenkins, 104 Ill. 149.

A judgment of the Appellate Court reversing the judgment of the circuit court and remanding the cause for further proceedings is not final, (Callahan v. Ball, 197 Ill. 323; Gade v. Forest Glen, etc., Co., 158 Ill. 43; Jones v. Fortune, 128 Ill. 520; Anderson v. Fruitt, 108 Ill. 379; Harzfeld v. Converse, 105 Ill. 537; Buck v. Hamilton County, 99 Ill. 508) and the same is true where the judgment below is reversed in part and affirmed in part. Gade v. Forest Glen, etc., Co., 158 Ill. 43; International Bank v. Jenkins, 109 Ill. 224.

Attachment Proceedings.

Where after the commencement of an action in assumpsit plaintiff also commences an attachment proceeding, and also takes judgment in assumpsit, an order striking the attachment proceeding on the ground that plaintiff had abandoned it by taking judgment on the merits is, as to the attachment proceeding, a final judgment. Hemphill v. Collins, 117 Ill. 398.

Drainage Proceedings.

Where a proceeding is merely for condemnation, in which the owners of the land sought to be condemned seek to attack the organization of a levee district, the order confirming the report of the commissioners and establishing the district is properly spoken of as final, (Damon v. Barker, 239 Ill. 640; Smith v. Claussen Park District, 229 Ill. 161; Cleveland C. C. & St. L. R. Co. v. Polecat, etc., District, 213 Ill. 86) but where the end contemplated by the proceedings is not merely the establishment of a drainage district but also the assessment upon the lands benefited of the amount necessary to pay the expenses of the work, and the damages occasioned thereby, the final order is the confirmation of the assessment roll, and not the order establishing the district. Damon v. Barker, 239 Ill. 640; Mack v. Polecat, etc., District, 216 Ill. 63.

Local Improvement Proceedings.

No judgment in a local improvement proceeding is a "final judgment," within the meaning of section 32 of the act of 1897 (J. & A. ¶1420), known as the Local Improvement Act, relating to proceedings pending appeal from the judgment of the county court in such a proceeding, unless judgment has been entered on the re-cast roll, if the roll is ordered to be re-cast. Evanston v. Knox, 241 Ill. 468.

Proceeding for an Accounting.

In actions of account the final judgment is upon the report of the auditors and not the order adjudging defendant liable to submit to an accounting. Lee v. Abrams, 12 Ill. 116; Lee v. Yanaway, 52 Ill. App. 25.

FINAL JUDGMENTS, ORDERS OR DECREES.

The expression "final judgments, orders and decrees," used in section 8 of the act of 1877, (J. & A. ¶ 2968), and in section 91 of the Practice Act (J. & A. ¶ 8628), as applied to judgments of the Appellate Court, include only judgments which put an end to the litigation by determining the rights of the parties therein, as where the Appellate Court renders judgment in proper cases, reverses without remandment, or reverses and remands where its judgment is so far conclusive of the rights of the parties or such instructions are given that nothing remains to be done by the lower court but to carry into effect the judgment or mandate of the Appellate Court. Fanning v. Rogerson, 142 Ill. 480; Harzfeld v. Converse, 105 Ill. 537; Joliet & C. R. Co. v. Healy, 94 Ill. 418.

FINAL JURISDICTION.

Section 19 of the act of 1907 (J. & A. ¶ 4655), known as the Local Option Act, providing that county courts shall have "final jurisdiction" of contests of elections held under the act, excludes, by the quoted expression, ex vi termini, the jurisdiction of all other courts subsequent to the determination in the county court, so that no appeal lies from such determination. Saylor v. Duell, 236 III. 432.

Final Order.

A final order in chancery is one which finally disposes of the whole matter of the suit; and may be either the decree itself, or an order subsequent to the decree, when something further remains to be done in carrying the decree into effect before the whole subject is finally disposed of, and a further and final order is requisite for that purpose. Wing v. Warner, 2 Doug. (Mich.) 291.

FINAL PORT.

A marine policy until the ship arrives "at her final port," covers her only until

she arrives at her port of discharge; and does not protect her while she is a seeking vessel from island to island. Moore v. Taylor, 3 L. J. K. B. 132; 1 A. & E. 25; 3 N. & M. 406.

FINAL SAILING.

"Final sailing," in a charter-party, means the final departure of the vessel from the port named, with her papers on board, and everything complete for the purpose, and with the view of proceeding on her voyage without intending to come back; even though, without clearing the fiscal limits of the port, she may have been driven back to it by stress of weather. Roelandts v. Harrison, 23 L. J. Ex. 169; 9 Ex. 444: Hudson v. Bilton, 26 L. J. Q. B. 27; 6 E. & B. 565: Price v. Livingstone, 53 L. J. Q. B. 118; 9 Q. B. D. 679: Sailing-Ship "Garston" Co. v. Hickie, 15 Q. B. D. 587.

Final Settlement.

A final settlement is, as its terms import, a conclusive determination of all the past administration—the unimpeachable evidence of its own verity, if founded on regular proceedings, in the absence of fraud. Sims v. Waters, 65 Ala. 445.

FINANCES.

The term "finances," as used in section 26 of the Counties Act (J. & A. ¶ 2773), relating to the power of counties to provide county buildings, includes all debts and liabilities of every description, and the assets and other means of discharging the same. Coles County v. Goehring, 209 Ill. 167.

FIND FROM THE EVIDENCE.

Where an instruction contains but a single sentence and begins with the requirement to "find from the evidence" the matters therein, the direction to "find from the evidence" will apply to the entire sentence, although the quoted expression is unnecessarily repeated in the middle of the instruction, it being unnecessary that each thought or element specified in the instruction shall be im-

mediately preceded by that expression. Leighton, etc., Co. v. Snell, 217 Ill. 160; Chicago & A. R. Co. v. Fisher, 141 Ill. 625.

FINDING OF FACTS.

The "finding of facts" contemplated by section 118 of the Practice Act (J. & A. ¶ 8655), formerly section 87 of the Practice Act, to be made by the Appellate Court, is a finding of the ultimate fact or facts upon the existence of which, as set up in the pleadings or cause, the rights of the parties depend, and not the evidence of those facts or those subordinate or evidentiary facts which, when established, contribute to the establishment of the ultimate fact which must exist in order to sustain the cause of action. Laughlin v. Norton, 267 Ill. 483; Papke v. G. H. Hammond Co., 192 Ill. 637; Hogan v. Chicago, 168 Ill. 561; Travellers', etc., Co. v. Pulling, 159 Ill. 607; Senger v. Harvard, 147 Ill. 309; Siddall v. Jansen, 143 Ill. 541; Hayes v. Massachusetts, etc., Co., 125 Ill. 631; Rogers v. Chicago B. & Q. R. Co., 117 Ill. 117. To the same effect see Brown v. Aurora, 109 Ill. 167.

"In the decree at bar appears the recital that the court 'finds' So and So. The court could not 'find' the facts therein stated unless it did so either from admissions in the pleading or from the stipulations of the parties, or from the evidence. In the absence of anything to the contrary in the record, this court should presume, if necessary in order to sustain the 'findings,' that the court did hear evidence." Atkinson v. Linden Steel Co., 138 Ill. 192.

FINE.

"'Fine,' finis. Here (Litt. s. 194) signifieth a pecuniarie punishment for an offence, or a contempt committed against the King, and regularly to it imprisonment appertaineth. And it is called finis, because it is an end for that offence. And in this case a man is said facere finem de transgressione, etc., cum rege, to make an end or fine with the King for such a transgression. It is also taken for a

summe given by the tenant to the lord for concord, and an end to be made. It is also taken for the highest and best assurance of lands, etc." Co. Litt. 126 b.

Pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanor. People v. Nedrow, 122 Ill. 366.

The term "fine" and the term "forfeiture" are often used interchangeably to designate the same thing, and may, in many cases, be regarded as equivalents for each other. People v. Nedrow, 122 Ill. 367.

The term "fine" may include a forfeiture or penalty recoverable in a civil action. People v. Nedrow, 122 Ill. 366.

A fine is a pecuniary penalty, and is commonly (perhaps always), to be collected by suit in some form. Gosselink v. Campbell, 4 Iowa 300.

A fine has been described as "amends or pecuniary mulct for an offence committed." State v. Robertson, 15 Rich. (S. C.) 20.

In criminal law, it is a pecuniary punishment imposed by the judgment of a court, upon a person convicted of crime. The State v. Steen, 14 Texas 398.

A fine is a sum of money exacted of a person guilty of a misdemeanor or a crime, the amount of which may be fixed by law or left to the discretion of the court. Village of Lan. v. Richardson, 4 Lansing (N. Y.) 140.

"Fine" in § 3294, Wis. Stats. 1898, does not include forfeitures imposed by municipal corporations for violation of their ordinances. State v. Hamley, 137 Wis. 458.

As to Real Estate.

A fine, says Lord Coke, is a feoffment (i. e., deed) upon record, called so because finem imponit litibus. It puts a finis or end to litigation. Its object is to quiet titles more speedily than by the ordinary limitations of twenty and twenty-five years. By means of this final proceeding, one of two contesting claimants of real estate could compel an assertion or abandonment of the pretensions of his adversary in one-fifth the usual period of delay. McGregor v. Comstock, 17 N. Y. 166.

A fine is a conveyance of record, and although the proceeding is fictitious, yet it appears of record that the purchaser has a title, not only adverse, but paramount to that of the husband, or his heir who has suffered the recovery. Guthrie v. Heirs of Owen, 10 Yerg. (Tenn.) 341.

Distinguished from Recovery.

A fine operates as an extinguishment of the estate-tail, and passes a base or a qualified fee. * * * But a common recovery does not operate in that manner; for a common recovery passes not a base fee, but a full absolute unlimited and rightful fee, and is to be considered as the proper conveyance of a tenant in tail, and passes the fee in the same manner as the fee is passed by a feoffment of tenant in fee. Martin v. Strachan, 5 T. R. 109 n.

FINE, IMPRISONMENT OTHER-WISE THAN IN THE PENITENTIARY.

The expression "fine or imprisonment otherwise than in the penitentiary," used in section 8 of article 2 of the Constitution of 1870, specifying the cases when persons may be held to answer for criminal offenses without indictment, includes every class of offenses where the punishment is either by fine or jail sentence, or both. People v. Glowacki, 236 Ill. 616.

FIRE.

The common understanding of the word "fire" would never include heat, short of the degree of ignition, however produced. Gibbons v. German, etc., Inst., 30 III. App. 266.

"Loss or damage occasioned by fire," in a fire policy, are words to be construed as ordinary people would construe them. "They mean loss or damage either by ignition of the article consumed, or by ignition of part of the premises where the article is; in the one case there is a loss, in the other a damage, occasioned by fire" (per Byles, J., Everett v. London Assrce., 19 C. B. N. S. 133; 34 L. J.

C. P. 301; 13 W. R. 862). "Fire" means, in this connection, an actual burning directly causing the injury, for In jure non remota causa, sed proxima spectatur. Bac. Max. Reg. 1.

Thus neither artificial nor solar heat (Austin v. Drewe, 6 Taunt. 436; 2 Marsh. 130: per Byles, J., Everett v. London Assrce., sup.), nor lightning, nor an explosion of gunpowder or of fire-damp, or of a steam-engine, nor the discharge of ordnance, nor a projectile from either a volcano or a gun, is "fire" within a fire policy, unless there be an actual setting on fire directly causing the injury insured against. Everett v. London Assrce., sup.

But "any loss resulting from an apparently necessary and bona fide effort to put out a fire, whether it be by spoiling the goods by water, or throwing the articles of furniture out of window, or even the destroying of a neighboring house by an explosion for the purpose of checking the progress of the flames, in a word, every loss that clearly and proximately results, whether directly or indirectly, from the fire, is within the policy" (per Kelly, C. B., Stanley v. Western Insrce., L. R. 3 Ex. 74; 37 L. J. Ex. 73; 17 L. T. 513; 16 W. R. 369). But, on the authority of some American cases, it has been stated that if a fire has not actually reached the premises whence articles are removed, the damage occasioned by such removal would not be occasioned by "fire," even though the removal was under the reasonable apprehension that the fire would reach the premises in which the articles were. Porter, 119.

"Fire," in an exception to a covenant to repair, is not, in an open contract to sell the Lease, to be extended by adding "or other casualty." Crosse v. Morgan, 60 L. T. 703; 37 W. R. 543.

FIRE AND SWORD.

Letters of fire and sword were the ancient means for dispossessing a tenant who retained possession contrary to the order of the judge and diligence of the law. They were directed to the sheriff, and ordered him to call the assistance of

the county to dispossess the tenant. Bell, Dict.; Ersk. Inst. lib. 4, tit. 3, § 17.

FIRE ORDEAL.

In Saxon and old English law. The ordeal or trial by red-hot iron; which was performed either by taking up in the hand a piece of red-hot iron, of one, two or three pounds weight, or by stepping barefoot and blindfolded over nine red-hot ploughshares laid lengthwise at uneven distances. 4 Bl. Com. 343. Cowell.

FIREARM.

A weapon which acts by the force of gunpowder. Cada v. The Fair, 187 Ill. App. 116.

"A fire-arm is a weapon which acts by the force of gunpowder." Harris v. Cameron, 81 Wis. 243; Atwood v. State, 53 Ala. 509.

"It appeared in evidence that the defendant, with ten or twelve other men, formed one company in the parade, and that all the men in this company carried ordinary breech-loading Springfield rifles, which had been altered and bored in the barrel near the breech, and the firingpins had also been filed down so as to make them immovable; and in this condition they could not discharge a missile by means of gunpowder or any other explosive. The defendant contends that these weapons were not firearms, within the meaning of the statute [prohibiting all but certain bodies of men from drilling with firearms]. The purpose for which those alterations were made is not They would not be obvious disclosed. to the ordinary observer while the rifles were carried in the parade. So far as appearance went, it was a parade with firearms which were efficient for use. To the public eye, it was a parade in direct violation of the statute. The men who carried these weapons could not actually fire them, but it would be generally supposed that they could. With the exception of the danger of being actually shot down, all the evils which the statute was intended to remedy still existed in the parade in which the defendant took part.

arm within the meaning of the statute would be to give too narrow and strict a construction to its words." Commonwealth v. Murphy, 166 Mass. 171.

FIRM.

The name, title, or style under which a company transacts business; a partner-ship of two or more persons; a commercial house. People v. Strauss, 97 Ill. App. 55.

The word "firm," in its ordinary acceptation, implies a partnership. Bredhoff v. Lepman, 181 Ill. App. 250.

"The word 'firm,' I believe, like many mercantile terms, is derived from an Italian word, which means simply 'signature,' and it is as much the name of the house of business as John Nokes or Thomas Stiles is the name of an individual. The name of a firm is a very important part of the goodwill." Per Wood, V.-C., Churton v. Douglas, 28 L. J. Ch. 841; Johns. 174; 7 W. R. 365.

FIRM NAME.

A firm name is such name as the copartners choose to adopt, and may disclose the names of all the partners or of none of them, or the name of but one of them may be used as the firm name. Daugherty v. Heckard, 189 Ill. 245.

FIRST AND SECOND SECTIONS.

Section 6 of the act of 1872, relating to the sale of intoxicating liquor, now superseded by the Dramshops Act (J. & A. ¶¶ 4600 et seq.), providing for certain penalties for violations of the "first and second sections" of the act does not require proof of a violation of both sections to sustain a conviction, the obvious meaning of the quoted expression being that the penalties are imposed for the violation of either section. Streeter v. People, 69 Ill. 598.

FIRST CLASS.

parade in which the defendant took part. The term "first class" is a relative To hold that such a weapon is not a fire- term, and depends upon the use of the

thing to which it is applied, and the character of the persons who are to use it. Cleveland v. Martin, 218 Ill. 90.

FIRST COUSIN.

A person's first cousin is the child of his uncle or aunt; and only persons standing in that relationship to him will take under a gift to his "first cousins"; first cousins once removed will not be comprised (Sanderson v. Bailey, 8 L. J. Ch. 18; 4 Myl. & Cr. 56: Stoddart v. Nelson, 25 L. J. Ch. 116; 6 D. G. M. & G. 68; V. 2 Jarm. 152), unless there be no first cousins properly so called. 1 Jarm. 153; Wms. Exs. 1110.

FIRST DAY OF THE NEXT TERM.

A recognizance to appear on the "first day of the next term" is valid although the recognizance proceeds "to be holden" etc. "on October 2," which was not the first day of the next term, the undertaking being to appear "on the first day," etc., whenever that was, and which the defendant was bound to know at his peril. Mooney v. People, 81 Ill. 137.

FIRST HALF OF AUGUST.

A contract for the delivery of a quantity of salt "first half of August" calls for a delivery on or before noon of August 16, and is not performed by a delivery on August 16 later than noon. Grosvenor v. Magill, 37 Ill. 241.

FIRST INVENTOR.

The grant of a patent must be "to the true and first inventor" (Stat. of Monopolies, 21 Jac. 1, c. 3). "It is a material question," says Tindal, C. J., "to determine whether the party who got the patent was the real and original inventor or not, because these patents are granted as a reward, not only for the benefit that is conferred upon the public by the discovery, but also to the ingenuity of the first inventor; and although it is proved that it is a new discovery so far as the world is concerned, yet, if anybody is able to show that, although that was new, the party who got the patent was not

the man whose ingenuity first discovered it; that he had borrowed it from A. or B. (Barber v. Walduck, cited 1 C. & P. 567), or taken it from a book that was publicly circulated in England (Vh. Stead v. Williams, 7 M. & G. 818; 2 Webst. P. R. 126: Heurteloup's Case, 1 Webst. R. 553: Plimpton v. Malcolmson, 45 L. J. Ch. 505; 3 Ch. D. 531, 558: Plimpton v. Spiller, 47 L. J. Ch. 211; 6 Ch. D. 412: Harris v. Rothwell, 35 Ch. D. Re Avery, 26 Ch. D. 307), and which was open to all the world; then, although the public had the benefit of it, it would become an important question whether he was the first and original inventor of it." There is nothing, however, to prevent him from employing his servants in assisting him to bring a design to perfection, or to work out an idea first suggested by him (Minter v. Wells, 1 Webst. R. 132), or from employing third persons for such a purpose (Bloxam v. Elsee, 1 C. & P. 558). He is still the true and first inventor. If there are two persons, actual inventors in this country, who invent the same thing simultaneously, he who first takes out the patent is the first and true inventor; and a person is also entitled to that title who patents an invention previously invented, but not sufficiently disclosed (Plimpton v. Malcolmson, sup.). The rule, it will be observed, is, he who is first in England is the first for England: and therefore if an invention be new within the realm, the person who introduces it is its first inventor, although it may previously have been practiced abroad (Edgeberry v. Stephens, 2 Salk. 446: Plimpton v. Mal-The communication colmson, sup.). however made in England by one British subject to another, of an invention does not make the person to whom the communication is made the first and true inventor. If, therefore, a man makes an invention, and dies before he has taken out a patent for it, his representatives cannot take one out. Marsden v. Saville Street Co., 3 Ex. D. 203.

FIRST PUBLICATION.

able to show that, although that was new, A mere reprint of a book, though called the party who got the patent was not a new edition, is not "the first publica-

tion" of itself or of the book of which it is a reprint, within s. 13, Copyright Act, 1842, 5 & 6 V. c. 45; secus, if the new edition is substantially a new work. Thomas v. Turner, 56 L. J. Ch. 56; 33 Ch. D. 292; 55 L. T. 534; 35 W. R. 177.

FIRST SON.

The "first son," or "child," means prima facie the first-born. And in like manner if a child be designated by any other numeral,—such as "second," "third," etc.,—the reference is to the order of birth. But this construction may be varied by the context or circumstances. 2 Jarm. 213-216; Elph. 352.

FIRST VOYAGE.

"It seems that a 'first voyage' is taken to be one entire trading voyage out and home, however long or indirect that voyage may be." Wood. 354, citing Fenwick v. Robinson, 3 C. & P. 323: Pirie v. Steele, 8 C. & P. 200.

FISH.

Crayfish are "fish" within s. 24, 24 & 25 V. c. 96 (Caygill v. Thwaite, 1 Times Rep. 386); and Oysters are "fish" within 13 Ric. 2, St. 1, c. 19, and 17 Ric. 2, c. 9 (Maldon v. Woolvet, 12 A. & E. 13). From those cases, semble, shell fish are generally included in the word "fish."

FISH ROYAL.

A whale, porpoise, or sturgeon thrown ashore on the coast of England belonged to the king as a branch of his prerogative. Hence these fish are termed "royal fish." Hale, de Jur. Mar. pt. 1, c. 7; 1 Sharswood, Bl. Comm. 290; Plowd. 305: Bracton, lib. 3, c. 3.

FISHERY.

A place prepared for catching fish with nets or hooks. This is commonly applied to the place of drawing a seine or net. 1 Whart. (Pa.) 131, 132.

A right or liberty of taking fish; a spe-

cies of incorporeal hereditament, anciently termed "piscary," of which there are several kinds, 2 Bl. Comm. 34, 39; 3 Kent, Comm. 409-418; Angell, Watercourses, § 61 et seq.; Angell, Tide Waters, p. 124, c. 5.

A common of fishery is not an exclusive right, but one enjoyed in common with certain other persons. 3 Kent, Comm. 329.

A free fishery is said to be a franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Comm. 329.

A several fishery is one by which the party claiming it has the right of fishing, independently of all others, so that no person can have a coextensive right with him in the object claimed; but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burrows, 2814.

A distinction has been made between a common fishery (commune piscarium), which may mean for all mankind, as in the sea, and a common of fishery (communium piscariae), which is a right, in common with certain other persons, in a particular stream. 8 Taunt. 183. Mr. Angell seems to think that "common of fishery" and "free fishery" are convertible terms. Angell, Watercourses, c. 6, §§ 3, 4.

Mr. Woolrych says that sometimes a free fishery is confounded with a several, sometimes it is said to be synonymous with common, and again it is treated as distinct from either. Woolr. Waters, 97.

A several fishery, as its name imports, is an exclusive property. This, however, is not to be understood as depriving the territorial owner of his right to a several fishery when he grants to another person permission to fish; for he would continue to be the several proprietor, although he should suffer a stranger to hold a coextensive right with himself. Woolr. Waters, 96.

These distinctions in relation to several, free, and common of fishery are not strongly marked, and the lines are sometimes scarcely perceptible. "Instead of

going into the black-letter books to learn what was a fishery, and a free fishery, and a several fishery," says Huston, J., "I am disposed to regard our own acts, even though differing from old feudal law." 1 Whart. (Pa.) 132.

"Fishing may be of two kinds ordinarily, viz., the fishing with the net, which may be either as a liberty without the soil, or as a liberty arising by reason of and in concomitance with the soil, or interest or propriety of it; or otherwise it is a local fishing that ariseth by and from the propriety of the soil." Hale, De Jure Maris, pt. 1, c. 5, p. 18 Hargrave's Tracts.

FISHING IMPLEMENT.

The term "fishing implement" was construed to include the use of lines, seines, spears, nets, and any of the ordinary and usual modes of catching fish in rivers or bays. Commonwealth v. Adams, 160 Mass. 311 (1894), quoting Locke v. Motley, 2 Gray 265.

FISSURE VEIN.

A longitudinal opening with a foreign substance in it. Crocker v. Manley, 164 III. 290.

FIT.

"A 'fit' person to execute an office, is he,---'qui melius et sciat et possit, offiintendere.' 'This illud idoneus,' says Ld. Coke, 'is oftentimes in law attributed to those who have any office or function; and he is said in law to be idoneus, apt and fit to execute his office, who has three things, honesty, knowledge and ability; honesty to execute it truly, without malice, affection or partiality; knowledge to know what he ought duly to do; and ability, as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it." Dwar. 685.

Fit for Cultivation.

That condition of the soil, in its natural condition, as will enable a farmer bringing to business a reasonable amount of skill, to raise regularly and annually by tillage, grain or other staple crops. Keeran v. Griffith, 34 Cal. 581.

FITTINGS.

"Fittings for gas" in s. 14, Gasworks Clauses Act, 1847 (10 V. c. 15), includes all the apparatus for the supply or consumption of gas, including gas stoves used for heating. Gaslight & Coke Co. v. Hardy, 56 L. J. Q. B. 168; 17 Q. B. D. 619; 55 L. T. 585; 35 W. R. 50; 51 J. P. 6; 2 Times Rep. 851: Same v. Smith, 3 Times Rep. 15.

FIVE SUCCESSIVE DAYS.

A certificate that a notice of special assessments was published "five times," stating the dates of the first and last publications, without stating that the publications were successive, does not show a compliance with section 27 of the act of 1872, known as the Local Improvement Act, now section 44 of the act of 1897 (J. & A. ¶ 1434), requiring such notices to be published "five successive days." Casey v. People, 165 Ill. 50; Toberg v. Chicago, 164 Ill. 573; Chandler v. People, 161 Ill. 42; Evans v. People, 139 Ill. 554.

Cities and Villages Act.

Section 27 of the act of 1872, known as the Local Improvement Act, now section 44 of the act of 1897 (J. & A. ¶ 1434), requiring that notices of special assessments be published "five successive days" in certain cases, is complied with by publishing such a notice for five successive week days, although a Sunday intervened between two of the days, Sunday being dies non juridicus, and not counted in computing the number of successive publications required by the statute. Rasmussen v. People, 155 Ill. 72; McChesney v. People, 145 Ill. 619.

FIXED.

When an absolute contract is entered into the rights and liabilities of the parties thereto are said to be fixed. Smart v. Morrison, 15 Ill. App. 229.

FIXED FURNITURE.

Looking-glasses, standing on chimneypieces and nailed to the wall, and a bookcase standing (but not fastened to) brackets and screwed to the wall, held within this phrase (Birch v. Dawson, 4 L. J. K. B. 49; 2 A. & E. 37; 4 N. & M. 22); but a book-case merely placed in, but not fastened to, the wall, was held by Littledale, J., not "fixed furniture." S. C., 6 C. & P. 658.

FIXED PERIOD.

The Apportionment Act, 4 W. 4, c. 22, s. 2, provides for the apportionment of all rents, dividends, and other payments "made payable, or coming due, at fixed periods"; a company's dividends, out of profits to be divided half-yearly, were held payable at "fixed periods" (Hartley v. Allen, 27 L. J. Ch. 621; 31 L. T. O. S. 69; 6 W. R. 407). Wood, V.-C., doubted (but followed) that decision, but held that Ry. Dividends, where there was no obligation to pay them at any stated period, were not payable at "fixed periods" (Re Maxwell, 32 L. J. Ch. 333; 1 H. & M. 610; 11 W. R. 480). So royalties on ore when obtained, are not so payable. St. Aubyn v. St. Aubyn, 30 L. J. Ch. 917; 1 Dr. & Sm. 611. Vf. Harris v. Harris. 11 W. R. 451.

FIXED TIME.

The expression "fixed time," as used in section 24 of article 5 of the Constitution of 1870, defining "office," does not necessarily mean a definite period, as for instance one year, two years or three years, but refers to a term of office which is established or settled, as contradistinguished from a term which depends upon the mere will or pleasure of the appointing power. People v. Loeffler, 175 Ill. 603.

FIXTURES.

Such articles of property as are deemed personal, in contradistinction to real, but for their attachment to or connection with land, or the rights of inheritance, or such parts of the land or realty which, being partly separated or severed, have not changed their character for want of a complete severance in fact, or by contract, and so as, in either case, to change their character. Cook v. Whiting, 16 Ill. 482.

Any articles affixed to the inheritance by the owner are fixtures in the general sense of the term, and if the inheritance is sold or mortgaged the fixture goes with the freehold. Fifield v. Farmers', etc., Bank, 148 Ill. 170; Wood v. Whelen, 93 Ill. 169.

What Constitute.

As between an executor and heir, or a vendor and vendee, all things which are necessary to the full and free enjoyment of the freehold are fixtures and pass with it. Arnold v. Crowder, 81 III. 60; Cook v. Whiting, 16 III. 482.

Elements.

To constitute "fixtures," the following elements must appear: (1) real or constructive annexation of the thing in question to the realty; (2) appropriation or adaptation to the use or purpose of that part of the realty with which it is connected; (3) the intention of the party making the annexation to make it a permanent annexation to the freehold, the intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation and the policy of the law in relation thereto, the structure and mode of the annexation, and the purpose or use for which the annexation has been made. Owings v. Estes, 256 Ill. 556; Fifield v. Farmers', etc., Bank, 148 Ill. 169; Schmeling v. Rockford, etc., Co., 154 Ill. App. 313; Chapman v. Union Mutual Life Ins. Co., 4 Ill. App. 35; Jones v. Ramsey, 3 Ill. App. 312.

To determine the irremovable character of a fixture three tests are to be applied: (1) actual annexation to the realty or something appurtenant thereto; (2) application to the use or purpose to which that part of the realty with which it is connected is appropriated; (3) the intention of the parties to make a permanent accession to the freehold. Baker

v. McClurg, 198 Ill. 36; Sword v. Low, 122 Ill. 496; Ward v. Earl, 86 Ill. App. 639. To the same effect see Galena, etc., Co. v. McDonald, 160 Ill. App. 214.

Technical Sense.

The technical sense of the word "fixtures" is something substantially and permanently annexed to the soil, though in its nature removable. Ward v. Earl, 86 Ill. App. 639.

Intention as Test.

The clear tendency of modern authority is, in determining whether articles are fixtures, to give preeminence to the question of intention to make the article a permanent accession to the freehold (Owings v. Estes, 256 Ill. 556; Baker v. McClurg, 198 Ill. 34; Hacker v. Munroe, 176 Ill. 395; Hewitt v. General, etc., Co., 164 Ill. 424; Fifield v. Farmers', etc., Bank, 148 Ill. 170; Long v. Cockern, 128 Ill. 36; Sword v. Low, 122 Ill. 496; Arnold v. Crowder, 81 Ill. 58; Thielman v. Carr, 75 Ill. 392; Kelly v. Austin, 46 Ill. 158; Ogden v. Stock, 34 Ill. 527; Dooley v. Crist, 25 Ill. 458; Ward v. Earl, 86 Ill. App. 640; Jones v. Ramsey, 3 Ill. App. 312), and while the intention will not always determine the question, it will control in cases of doubt. Sword v. Low, 122 Ill. 496; Kelly v. Austin, 46 Ill. 158; Galena, etc., Co., v. McDonald, 160 Ill. App. 214; Chapman v. Union, etc., Co., 4 Ill. App. 35; Jones v. Ramsey, 3 Ill. App. 313. But an intention will not control where the person making the annexation had no right to do so except as part of the realty. Ogden v. Stock, 34 Ill. 528; Dooley v. Crist, 25 Ill. 458.

Relation of Parties as Affecting.

The rule as to what constitutes "fixtures," as between an executor and an heir, or as between a vendor and a vendee, is much more strict than between a tenant and a landlord (Owings v. Estes, 256 Ill. 556; Arnold v. Crowder, 81 Ill. 60; Cook v. Whiting, 16 Ill. 482), the rule in this state being liberal in favor of the tenant, and as between him and the landlord, removable trade fixtures may include all erections for the purpose of trade which he may have attached to the | Baker v. McClurg, 198 Ill. 36.

freehold during tenancy, such as soap vats, engines, working colliery, pans used in making salt, brew-houses, furnaces, green houses and hot houses erected by nurserymen and gardeners. Baker v. Mc-Clurg, 198 Ill. 34; Sword v. Low, 122 Ill. 500; Chicago & A. R. Co. v. Goodwin, 111 Ill. 281; Kelly v. Austin, 46 Ill. 159; Moore v. Smith, 24 Ill. 516; Mason v. Fenn, 13 Ill. 528; Galena, etc., Co. ▼. McDonald, 160 Ill. App. 215; Ward v. Earl, 86 Ill. App. 640.

As to Third Parties.

Where articles are fixtures in the proper sense of the term, a private agreement between a landlord and tenant that they shall be treated as personalty is not effective as to third parties, such as liening creditors. Fifield v. Farmers', etc., Bank, 148 Ill. 170; Dobschuetz v. Holliday, 82 Ill. 374.

As Between Landlord and Tenant.

The fact that the removal of a fixture may injure the fixture, while not injuring the freehold, does not, as between a tenant and a landlord, destroy the tenant's right to remove it, since the landlord is not affected by the injury, and the fixture may still be of value to the tenant. Baker v. McClurg, 198 Ill. 35.

Where a tenant during a term has erected trade fixtures on the demised premises, his taking a new lease containing no reservation of the fixtures estops him from removing them at the end of the new term, he being deemed to have acknowledged the right of the landlord to the fixtures. Baker v. McClurg, 198 Ill. 36; Sanitary District v. Cook, 169 Ill. 190.

Liens Act.

The term "fixtures," used in section 1 of the Liens Act (J. & A. ¶ 7139), while it may include trade fixtures, makes no distinction between the different kinds of Schmeling v. Rockford, etc., fixtures. Co., 154 Ill. App. 314.

Demolition.

The identity of a fixture is not lost by demolition, if it can be reconstructed.

FIXTURES OF EVERY DESCRIPTION, ATTACHED.

An assignment of a lease of buildings demising to the assignee all interest in the lease and in "fixtures of every description attached" to the buildings, or in or belonging thereto describes but one class of property, and substantially means "fixtures of every description" which are attached to the buildings, and does not include fixtures not attached thereto, the expression "attached to said building" being a limitation on what precedes it. Stettauer v. Hamlin, 97 Ill. 318.

FLAT.

The word "flat," as used with relation to stock transactions on the market, means "without interest." Morris v. Jamieson, 205 Ill. 90.

"Flats are as much separate dwellings as ordinary adjoining houses are. The difference is that flats are under one roof, and are divided one from another by a horizontal plane, but ordinary adjoining houses, by a perpendicular or vertical line." McDowell v. Hyman, 117 Cal. 71, quoting Stamper v. Sunderland, L. R. 3 C. P., 400.

FLAT STONES.

An ordinance providing that certain curbstones be bedded on "flat stones," without describing the nature of the stones, is not void for uncertainty in the description of the improvement where there is uncontradicted evidence that the quoted expression has a well known and commercial meaning among people engaged in the business of constructing street improvements, and that such stones are flat blocks of limestone used as supports for curbstones, the blocks being six inches thick and fifteen inches square. Beckett v. Chicago, 218 Ill. 101.

FLAX FACTORY.

A policy of fire insurance on a "flax factory" is not avoided by an increase of the risk insured against where insured installs rope machinery and manufactures rope in the insured premises, such manufacture being common in such a factory, and being a usual part of the business. Aurora, etc., Co. v. Eddy, 55 Ill. 221.

FLEE TO THE WALL.

A figurative expression used in the criminal law to express the duty of one assailed by violence to retreat as far as he safely may before making violent resistance. It probably originated from the language of Blackstone, who says: "The party assaulted must flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment, or as far as the flerceness of the assault will permit him." 4 Bl. Comm. 185.

FLETA.

The title of an ancient law book, supposed to have been written by a judge while confined in the Fleet prison.

It is written in Latin, and is divided into six books. The author lived in the reigns of Edward II and Edward III. See liber 2, c. 66, § Item quod nullus; liber 1. c. 20, § Qui coeperunt: 10 Coke, pref. Edward II was crowned A. D. 1306. Edward III was crowned 1326, and reigned till A. D. 1377. During this period the English law was greatly improved, and the lawyers and judges were very learned. Hale, Hist. Com. Law, 173. Blackstone (4 Comm. 427) says of this work "that it was for the most part law until the alteration of tenures took place." The same remark he applies to Britton and Hingham.

FLIP.

To "flip" a car is to steal a ride. Chicago U. T. Co. v. Lundahl, 215 Ill. 299.

To "flip" a car means to try to jump on it for fun without attempting to become a passenger. Chicago U. T. Co. v. Lundahl, 117 Ill. App. 224.

FLIGHT.

Flight or an attempt to escape after indictment found, or before, on a crim-

inal charge being preferred against one, is a circumstance against the prisoner if unexplained. Evidence is admissible to show that the accused gave "straw bail" and forfeited his recognizance by voluntary absence, and passed under various aliases. MacNeil's Ill. Evidence 550.

FLOATING DEBT.

By the term "floating debt," as applied to a municipal corporation, is meant that mass of lawful and valid claims against the corporation, for the payment of which there is no money in the corporation treasury specially designed, nor any taxation or other means of providing money to pay, particularly provided. Mullanphy Bank v. Schott, 34 Ill. App. 510; see also 71 N. Y. 371-374.

The term "floating indebtedness," as used in a vote of a corporation, does not include the amount of a debt secured by mortgage on real estate. Mullanphy Bank v. Schott, 34 Ill. App. 510.

FLOATING SECURITY.

A floating security is "a security on the property of the company as a going concern, subject to the powers of the directors to dispose of the property of the company while carrying on its business in the ordinary course." Brunton v. Electrical Engineering Corp. (1892) 1 Ch. 434, citing In re Florence Land and Public Works Co., 10 Ch. D. 530.

Debentures which allow a company to deal with its assets in the ordinary course of business until the company is wound up or stops business or a receiver is appointed at the instance of the debenture holders constitutes a floating security. They constitute a charge and give a license to the company to carry on its Robson v. Smith (1895), 2 business. Ch. 118, citing In re Standard Manfg. Co. (1891), 1 Ch. 641.

FLORENTINE PANDECTS.

A copy of the Pandects discovered accidentally about the year 1137, at Amal-

Amalphi, the copy found its way to Pisa, and, Pisa having submitted to the Florentines in 1406, the copy was removed in great triumph to Florence. By direction of the magistrates of the town, it was immediately bound in a superb manner, and deposited in a costly chest. merly, these Pandects were shown only by torch light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collected by Politian, Bolognini, and Antonius Augustinus. An exact copy of them was published in 1553 by Franciscus Taurellus. For its accuracy and beauty, this edition ranks high among the ornaments of the press. Brenchman, who collated the manuscript about 1710, refers it to the sixth century. Butler, Hor. Jur. 90, 91.

FODDER.

From the moment produce is destined for food for cattle, it is "fodder for cattie" within a turnpike exemption, e. g., rye-grass or vetches cut and brought home at once, or turnips on their way to be boiled, or threshed barley on its way to be ground into meal; but not corn in the straw. Clements v. Smith, 30 L. J. M. C. 16; 3 E. & E. 238.

FOLC MOTE, FOLK MOTE OR FOLC GEMOTE.

(Saxon, from folc, people, and mote, or In Saxon law. gemote, meeting.) meeting of the people; a general assembly of the people, to consider and order matters of the commonwealth. Spelman, voc. "Gemotum." Any popular or public meeting of all the folk or people of a place or district. Brande.

The term was used to denote a court or judicial tribunal among the Saxons, which possessed substantially the powers afterwards exercised by the county courts and sheriff's tourn. These powers embraced the settlement of small claims, taking the oath of allegiance, preserving the laws, and making the necessary arrangements for the preservation of safety, phi, a town in Italy, near Salerno. From | peace, and the public weal. It appears that complaints were to be made before the folk gemote held in London annually, of any mismanagement by the mayor and aldermen of that city. It was called, also, a "burg gemote" when held in a burgh, and "shire gemote" when held for a county. See Manw. For. Laws; Spelman; De Brady; Cunningham.

A county court; an assembly of the people or freeholders of a county (conventus comitatus). Otherwise called the "shire mote." Spelman.

A city court; an assembly of the inhabitants of a city or borough (conventus civitatis sea burgi). Otherwise called the "burg mote." Spelman. The folc mote or city court of London is mentioned in ancient records. Spelman; Crabb, Hist. Eng. Law, 141. The term seems to have been generally applied to all courts that were adapted to the convenience of the people within any district. Spelman 26. See Cowell.

FOOD.

Ice cream is a food, whether sold in a restaurant, from a booth, or peddled from a basket, and whether in the form of an ice cream stein, cone or sandwich, or by the dish. Merle v. Beifeld, 194 Ill. App. 390.

Baking powder is not "food," within s. 2, 38 & 39 V. c. 63. Per Bulwer, Recorder, Warren v. Phillips, 44 J. P. 61; 68 Law Times, 246.

FOOT-PRINTS.

Evidence of foot-prints and their correspondence with the defendant's feet is competent, and, though "not by itself of any independent strength, is admissible with other proof as tending to make a case." Carlton v. People, 150 Ill. 181; Dunn v. People, 158 Ill. 586; People v. Hannibal, 259 Ill. 512.

FOR.

The word "for," when applied to time, ordinarily means "during." Pearson v. Bradley, 48 Ill. 252.

Section 10 of the Dower Act (J. & A.

¶ 4246), providing that devises by a husband or wife "for" a surviving wife or husband shall bar dower in certain cases, forbids, by the use of the word "for," any limitation of the meaning of the section to devises made directly to the wife, and therefore includes devises made to trustees for her benefit. Warren v. Warren, 148 Ill. 650.

"For," used with the active participle of a verb—e. g., a power "for making" rules,—means, "for the purpose of" (A.-G. v. Sillem, 33 L. J. Ex. 213). So an unlicensed person does not fish "for" salmon (trout or char, 41 & 42 V. c. 39, s. 7) within s. 35, Salmon Fishery Act, 1865, unless he fishes for the purpose of catching salmon, etc. (Marshall v. Richardson, 58 L. J. M. C. 45); but the intent is immaterial qua the offence (s. 36) of using (without license) an instrument other than rod and line "for catching" salmon, etc. Lyne v. Leonard, 37 L. J. M. C. 55; L. R. 3 Q. B. 156.

Sometimes "for" creates a condition precedent. "When one promises, agrees, or covenants to do one thing for another, there is no reason he should be obliged to do it till that thing, for which he promised to do it, be done; and the word 'for' is a condition precedent in such cases. But upon this head some diversities are to be observed. First, if there be a day set for the payment of money, or doing the thing which one promises, agrees, or covenants to do, for another thing, and that day happens to incur before the time the thing for which the promise, agreement or covenant is made, is to be performed by the tenor of the agreement; there, though the words be 'that the party shall pay the money,' or, 'do the thing for such a thing,' or, 'in consideration of such a thing,' after the day is past the other shall have an action for the money or other thing, although the thing for which the promise, agreement, or covenant was made, be not performed; for it would be repugnant there to make it a condition precedent; and, therefore, they are in that case left to mutual remedies, on which, by the express words of the agreement, they have depended. V. 48 Edw. 3. 2, 3, cited in Ughtred's Case, 7 Rep. 10 b, where the diversity is taken when there are mutual remedies and not: it is thus put in that Sir R. Pool covenants with Sir R. Tolcelser to serve him with three Esquires in the wars of France. Sir R. Tolcelser covenants, in consideration of those services, to pay him so much money; and there it is said, action will lie for the money without any services performed. But if you look into the book at large, you will find it was upon the diversity which I have taken; for the Case in 48 Edw. 3. 2, 3 is, R. Pool covenants with R. Tolcelser to serve him with three Esquires in the wars of France, and R. Tolcelser covenanted with him to pay him so much for the service; and it was further agreed, that twenty marks of the money should be paid in England, at a day certain, before they went for France, and the rest by quarterly payments, which might likewise incur before the service; and upon action brought by Sir R. Pool, it was objected that service was not performed; but there was no room for that objection upon the diversity which I have taken, the money, by the agreement, being made payable at a day certain, before the service was to have been performed." Per Holt, C. J., Thorp v. Thorp, 12 Mod. 460, 461; 1 Ld. Raym. 662.

An obligation signed "for" or "for and on behalf of" another, makes that other, if anyone, liable; not the signatory (Aggs v. Nicholson, 25 L. J. Ex. 348; 1 H. & N. 165): but evidence is admissible to show that, by the custom of a market, a contract signed "for and on account of the owner" binds the signatory personally (Pike v. Ongley, 18 Q. B. D. 708; 56 L. J. Q. B. 373; 35 W. R. 534; 3 Times Rep. 549); and an unauthorized acceptance "for and on behalf of" another binds the acceptor personally. West Lond. Commercial Bank v. Kitson, 13 Q. B. D. 360; 53 L. J. Q. B. 345.

"The word 'for' means 'in the place of,' and from the word, as commonly used, an implication of authority arises, but the implication is not a necessary implication." Kennedy v. Sullivan, 136 Ill. 97.

FOR CAUSE.

Section 12 of the act of 1895 (J. & A. ¶ 1811), known as the Civil Service Act, providing that employes in the classified civil service shall not be removed except "for cause," implies, by the quoted expression, that the charges must state a cause for his removal, which must be some substantial shortcoming which renders his continuance in his office or employment detrimental to the discipline or efficiency of the service. Heaney v. Chicago, 117 Ill. App. 411.

A contract of employment providing that the employment may be terminated at any time "for cause," refers, by the quoted expression, to such cause as is contributed to by the employe, and not to an arbitrary act on the part of the employer, although the contract also provides that the employer shall be sole judge of the cause for which he assumed to terminate the contract. Margulies v. Oppenheimer, 159 Ill. App. 522.

Means that a reason must exist which is personal to the individual sought to be removed, which the law and a sound public opinion will recognize as a good cause for his no longer occupying the place. People v. Nichols, 19 Hun (N. Y.) 448.

FOR COURT HOUSE.

A recital in a deed that the grant is "for court house" and other county buildings does not operate as a condition that the land granted shall be used for no other purpose than such buildings or limit the power of the county to alienate the land. Downen v. Rayburn, 214 Ill. 349; Warren County v. Patterson, 56 Ill. 119.

FOR HER USE WHILE LIVING.

A devise to a wife "for her use while living" limits the gift and shows that the devisee took an estate for life and not a fee. Coulson v. Alpaugh, 163 Iil. 300.

FOR HIS TERM.

Where a county supervisor elected for two years requests relief from the ex

officio duty of acting as overseer of the poor in his township, which request is complied with by a board of supervisors whose term of office lasts but one year, and which board thereupon appoints an overseer of the poor for such town for one year, the request for relief does not, by the quoted expression, imply a resignation of the office either of supervisor or overseer of the poor, or prevent such supervisor, at the end of the year, from reassuming the duty of such overseer, the quoted expression implying nothing more than that he did not desire to discharge such duties during his term of office, and desired to be relieved of them for such period as the board might lawfully relieve him. People v. Smith, 236 Ill. 68.

FOR ONE YEAR ONLY.

Where it is provided that officers shall be elected "for one year only," they cannot hold over beyond the end of the year, or until the election of a successor. Kenneally v. Chicago, 220 Ill. 497.

FOR OR ON BEHALF OF.

The negative of a photograph is not made "for or on behalf of" a person within the meaning of a statute laying down a condition precedent to the retention of a copyright by the author of a photograph made for or on behalf of another, unless that person is entitled to have the negative of the photograph when made. Melville v. Mirror of Life Co. (1895), 2 Ch. 531.

FOR SALE.

Bread is carried out "for sale," within s. 7, 6 & 7 W. 4, c. 37, if anything (including its being actually weighed in the presence of the buyer) remains to be done in reference to its sale (Robinson v. Cliff, 45 L. J. M. C. 109; 1 Ex. D. 294: Ridgway v. Ward, 54 L. J. M. C. 20; 14 Q. B. D. 110): secus if the bread has been bought in the seller's shop, weighed in the presence of the buyer, and merely sent by the seller to the house of the buyer for the latter's convenience.

FOR SO LONG AS.

A bond given by a husband in lieu of alimony conditioned for the payment of a yearly sum to the wife "for so long as" she remained sole and unmarried is to be interpreted according to the natural meaning of the quoted expression, which is for so long a time as the wife remains sole and unmarried, whether before or after the death of the husband. Storey v. Storey, 125 Ill. 611.

FOR THE BENEFIT OF MY FAMILY.

Where a testator at the time of his death owned land subject to a mortgage, and where the will indicates a desire that the land shall be fully paid for, a devise of all his property to his widow to receive its rents and profits "for the benefit of my family" does not create a trust, requiring the widow to divide such rents and profits equally between herself and eleven children of testator, but shows an intention that the widow should manage and carry forward his business and pay off the mortgage, and use the surplus income in her discretion for the benefit of the group of persons residing in his household, consisting of his wife and children, so long as such persons remained members of the household. Dee v. Dee, 212 Ill. 349.

FOR THE LIKE SUM.

Section 15 of the act of 1874 (J. & A. ¶ 8827), relating to the fencing and operation of railroads, providing that engineers and conductors violating a previous section shall forfeit not less than \$10 or more than \$100, and that the corporation on whose road the offense is committed shall be liable "for the like sum," means, by the quoted expression, that the corporation shall be liable for the same sum to which engineers and conductors are liable. that is, not less than \$10 or more than \$100 for each offense, and not that the corporation shall be merely liable for the amount which the engineer or conductor has been, in a particular case, adjudged to pay on conviction. Toledo W. & W. Ry. Co. v. People, 81 Ill. 142.

FOR THE PAYMENT OF MONEY.

A decree foreclosing a mortgage and dismissing a cross bill is not "for the payment of money," within the meaning of section 101 of the Practice Act (J. & A. ¶ 8638), formerly section 73 of the Practice Act, relating to the dismissal of appeals for want of prosecution, etc., and judgments for damages in such cases. Hamburger Co. v. Glover, 157 Ill. 522.

FOR THE PECUNIARY PROFIT.

An institution of learning is not a corporation "for the pecuniary profit" of its stockholders or members, within the meaning of section 26 of the Corporations Act (J. & A. ¶2443), relating to the holding of real estate, although it appears that such institution charges fees for tuition, where such tuition is applied to educational purposes, and where no dividends were declared, and where no officer or member received money or profit from the institution. Santa Clara, etc., Academy v. Sullivan, 116 Ill. 388.

FOR THE PURCHASE OR IMPROVEMENT THEREOF.

Money loaned to one for the purchase or improvement of a homestead estate. which loan is evidenced by a note secured by a mortgage on such estate, is not "for the purchase or improvement thereof," within the meaning of section 3 of the Exemptions Act (J. & A. ¶ 5573), although the money loaned be actually used in purchase or improvement of the homestead, the liability being, as between the mortgagor and mortgagee, merely a liability for money loaned, so that such mortgage attaches merely to the portion of the property whose value exceeds \$1,000, unless the homestead right is released. Parrott v. Kumpf, 102 Ill. 427.

FOR THE RECOVERY OF MONEY ONLY.

The signification of an action "for the recovery of money only," within the meaning of section 2 of the Municipal Court Act (J. & A. ¶ 3314), relating to the classes of cases of which such court

has jurisdiction, as applied to cases of the fourth class, is an action where only a money judgment is sought, as distinguished from one seeking relief other than the recovery of money, and includes an action of tort. Maiss v. Metropolitan, etc., Co., 241 Ill. 181.

FOR THE SUPPORT OF HIMSELF AND FAMILY.

A will bequeathing to a son the income of a trust fund "for the support of himself and family" is to be construed as merely stating, by the quoted expression, the purpose or motive of the gift and not as creating a trust in favor of the legatee's family, where the remainder of the will does show that testator had no special intention to protect such family. Kirk v. Kirk, 166 Ill. App. 37.

FOR THE USE OF.

In an action at law by one for the use of another the expression "for the use of" is for the purpose of protecting the interest of the usee against the nominal plaintiff, and not for the benefit of the defendant, who is not interested in the declaration of use, and as far as defendant is concerned, the expression is surplusage. West Chicago S. R. Co. v. Lundahl, 183 Ill. 286; Union, etc., Bank v. Barth, 179 Ill. 86; Tedrick v. Wells, 152 Ill. 217; Hobson v. McCambridge, 130 Ill. 375; Zimmerman v. Wead, 18 Ill. 305; Smith v. Vandalia R. Co., 188 III. App. 429; Schiff v. Supreme Lodge, 64 Ill. App. 343.

FOR THEIR SERVICES.

The expression "for their services," used in section 9 of article 10 of the Constitution of 1870, relating to the compensation of county officers in Cook county, means for the entire and complete performance of their official duties. People v. Bradford, 267 Ill. 493.

FOR VALUE RECEIVED.

Generally the expression "for value received" used in a note imports a consideration. Beatty v. Western College, 177 Ill. 291.

The expression "for value received," used in a guaranty of a note, is prima facie evidence of a consideration for the guaranty. White v. Western, etc., Bank, 119 Ill. App. 359.

FORBEAR.

To "forbear" to press for immediate payment, means to give reasonable time; which, though indefinite, is a sufficient consideration for a guarantee. Oldershaw v. King, 27 L. J. Ex. 120; 2 H. & N. 517; Vth. per Bowen, L. J., Miles v. New Zealand Alford Estate Co., 32 Ch. D. 289: Coles v. Pack, L. R. 5 C. P. 65; 39 L. J. C. P. 63: Crears v. Hunter, 56 L. J. Q. B. 518; 19 Q. B. D. 341; 57 L. T. 554; 35 W. R. 821: contra Semple or Temple v. Pink, 1 Ex. 74; 16 L. J. Ex. 237.

"A forbearance is a determination of the will, not to do some given external act. Or (taking the notions which the term includes in a different order) a forbearance is in not doing some given external act, and in not doing it in consequence of a determination of the will." Const. Jurisp. 1, 377.

The giving a further day, when the time originally limited for the return of the loan, has passed. Dry Dock Bank v. Am. Life Ins. & T. Co., 3 N. Y. 355.

FORCE.

The word "force," as used in section 1 of the Forcible Entry and Detainer Act (J. & A. ¶5842), means actual force as contradistinguished from implied force. Fort Dearborn Lodge v. Klein, 115 Ill. 186; Parrott v. Hodgson, 46 Ill. App. 231.

The word "force," as used in section 1 of the Forcible Entry and Detainer Act (J. & A. ¶ 5842), means no more than the term "vi et armis" at common law. Phelps v. Randolph, 147 Ill. 339; Smith v. Hoag, 45 Ill. 251; Croff v. Ballinger, 18 Ill. 203. See Vi Et Armis.

"When the Code [of Georgia, providing that 'robbery is the wrongful, fraudulent and violent taking of money, goods, or chattels, from the person of another by force or intimidation, without the consent of the owner,' Prince, 678] speaks of force, it means actual violence." Nisbet, J., Long v. State (1852), 12 Ga. 315.

FORCE PUMP.

A representation in a policy of fire insurance that there was a force pump in the insured buildings does not imply that there was also a hose. Peoria, etc., Co. v. Lewis, 18 Ill. 562.

FORCED OUT OF THE COMPANY.

Where a stockholder grants to the corporation an exclusive right to manufacture under a patent during the life of the company or until the licensor is "forced out of the company," the quoted expression is to be construed as referring to exclusion, by the action of other stockholders, from active and responsible management, of the corporate affairs, and from beneficial enjoyment of the anticipated profits of the enterprise, and not to a legal expulsion from membership in the corporation, which depended on his holding stock. Havana, etc., Co. v. Ashurst, 148 Ill. 136.

FORCED SALE.

The sale by a trustee under a trust deed without levy under any process or order of court is not a "forced sale," within the meaning of section 1 of the act of 1851, relating to homesteads. Dawson v Hayden, 67 Ill. 53; Ely v. Eastwood, 26 Ill. 114.

Where a mortgage of a homestead estate contains no release of homestead rights, a proceeding in ejectment by the purchaser at a foreclosure sale, to be followed by a writ of possession, is a "forced sale," within the meaning of section 1 of the act of 1851, relating to homesteads. Pardee v. Lindley, 31 Ill. 187; Smith v. Marc, 26 Ill. 156.

A sale of a homestead by a master in chancery in pursuance of a decree foreclosing a mortgage and directing such sale, is a "forced sale" under judicial process, within the meaning of section 1 of the act of 1851, relating to homesteads. Wing v. Cropper, 35 Ill. 264.

"A forced sale is not necessarily an auction sale; an auction sale is not necessarily a forced sale; and it is not admissible therefore to say that one of the two terms answers the requirement for both." Dickison v. Reynolds (1882), 48 Mich. 163.

FORCIBLE DETAINER.

"Everyone commits the misdemeanor called a Forcible Detainer who, having wrongfully entered upon any lands or tenements, detains such lands and tenements in a manner which would render an entry upon them for the purpose of taking possession forcible." Steph. Cr. 55. Arch. Cr. 962-965; Rosc. Cr. 535-540.

FORCIBLE ENTRY.

Any entry made against the will of the occupant is a "forcible entry," within the meaning of the Forcible Entry and Detainer Act (J. & A. ¶¶ 5842 et seq.). Hammond v. Doty, 184 Ill. 250; Phelps v. Randolph, 147 Ill. 340; Chicago v. Wright, 69 Ill. 325; Reeder v. Purdy, 41 Ill. 286; Croff v. Ballinger, 18 Ill. 203; Roberts v. McEwen, 81 Ill. App. 417; Coverdale v. Curry, 48 Ill. App. 215; Parrott v. Hodgson, 46 Ill. App. 231.

An entry obtained by secret intrigue is a forcible entry within the meaning of the Forcible Entry and Detainer Act (J. & A. ¶¶ 5842 et seq.). McCartney v. Hunt, 16 Ill. 78; Parrott v. Hodgson, 46 Ill. App. 231.

Actual violence, amounting to a breach of the peace, is not necessary to constitute a forcible entry, within the meaning of the Forcible Entry and Detainer Act (J. & A. ¶5842). Hammond v. Doty, 184 Ill. 249; Phelps v. Randolph, 147 Ill. 339; Smith v. Hoag, 45 Ill. 251; Croff v. Ballinger, 18 Ill. 203; Roberts v. Mc-Ewen, 81 Ill. App. 417; Parrott v. Hodgson, 46 Ill. App. 231.

An entry in the absence of the owner, if against his will, is a forcible entry

within the meaning of the Forcible Entry and Detainer Act (J. & A. ¶¶ 5842 et seq.). Hammond v. Doty, 184 III. 249; Phelps v. Randolph, 147 III. 341; Wilder v. House, 48 III. 280.

A forcible entry is only such an entry as is made with a strong hand, with unusual weapons, an unusual number of servants or attendants, or with menace of life or limb; for an entry which only amounts in law to a trespass, is not within the statutes. But an entry may be forcible, not only in respect of a violence usually done to the person of a man, but also in respect to any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it at the time or not; especially if it be a dwelling house, and though a man enter peaceably, yet if he turn the party out of possession by force or frighten him out of possession by personal threats, or violence, this also amounts to a forcible entry; but not if he merely threaten to spoil the party's goods, or destroy his cattle, or do any injury which is not of a personal nature. Willard v. Warren, 17 Wend. (N. Y.) 261.

FORCIBLE ENTRY AND DETAINER.

Blackstone's Definition.

A forcible entry and detainer is committed by violently taking or keeping possession of lands and tenements with menaces, force and arms, and without the authority of law. Reeder v. Purdy, 41 Ill. 285.

Action.

A special statutory proceeding, summary in its nature, and in derogation of the common law. Fitzgerald v. Quinn, 165 Ill. 360; French v. Willer, 126 Ill. 618 (aff'g 27 Ill. App. 84). To the same effect see Schaumtoefel v. Belm, 77 Ill. 568; Burns v. Nash, 23 Ill. App. 554.

The action of forcible entry and detainer, under the Forcible Entry and Detainer Act, is not an action of tort. Craig, C. J., dissenting opinion French v. Willer, 126 Ill. 623.

Under the Forcible Entry and Detainer Act (J. & A. ¶ 5842), the action of forcible entry and detainer is a civil remedy, the sole object of which is to regain the possession that has been invaded. Craig, C. J., dissenting opinion French v. Willer, 126 Ill. 623.

The object of the action of forcible entry and detainer, under the Forcible Entry and Detainer Act (J. & A. ¶¶ 5842 et seq.), is to restore a person to the possession of lands or tenements of which he has been unlawfully deprived. Preiss v. Naliborski, 133 Ill. App. 207.

A mere civil proceeding authorized by the statute, under which the owner of lands may recover possession where the possession is unlawfully withheld. Craig, C. J., dissenting opinion French v. Willer, 126 Ill. 623.

FORCIBLY.

Counts in an indictment for rape charging that the act was done "violently" does not sufficiently charge that it was done "forcibly," within the meaning of section 237 of division 1 of the Criminal Code (J. & A. ¶ 3890), defining the crime of rape, the two terms being not synonymous, and not conveying the same meaning. People v. Jones, 263 Ill. 567.

FOREGOING.

A certificate of publication stating of a tax list that the "foregoing" was duly published in the Peoria Democratic Press, immediately following the tax list, will be held to refer, by the quoted expression, to such tax list. Jackson v. Cummings, 15 Ill. 451.

FOREHAND RENT.

In English law. A species of rent which is a premium given by the tenant at the time of taking the lease, as on the renewal of leases by ecclesiastical corporations, which is considered in the nature of an improved rent. 1 Term R. 486; 3 Term R. 461; 3 Atk. 473; Crabb, Real Prop. § 155.

FOREIGN.

That which belongs to another country; that which is strange. 1 Pet. (U. S.) 343.

Every nation is foreign to all the rest; and the several states of the American Union are foreign to each other with respect to their municipal laws. 2 Wash. C. C. (U. S.) 282; 4 Conn. 517; 6 Conn. 480; 2 Wend. (N. Y.) 411; 1 Dall. (Pa.) 458, 463; 6 Bin. (Pa.) 321; 12 Serg. & R. (Pa.) 203; 2 Hill (S. C.) 319; 1 D. Chip. (Vt.) 303; 7 T. B. Mon. (Ky.) 585; 5 Leigh (Va.) 471; 3 Pick. (Mass.) 293. And in respect to the distinction between foreign and inland bills of exchange. 112 U. S. 696; 41 Me. 302; 102 Mass. 141; 49 N. Y. 269.

But the reciprocal relations between the national government and the several states composing the United States are not considered as foreign, but domestic. 5 Pet. (U. S.) 398; 6 Pet. (U. S.) 317; 9 Pet. (U. S.) 607; 4 Cranch (U. S.) 384; 4 Gill & J. (Md.) 1, 63.

Foreign Answer.

An answer not triable in the country where it is made. St. 15 Hen. VI, c. 5; Blount.

Foreign Apposer.

An officer in the exchequer who examines the sheriff's estreats, comparing them with the records, and opposeth (interrogates) the sheriff what he says to each particular sum therein. 4 Inst. 107; Blount; Cowell, "Foreigne." The word is written "opposer," "opposeth," by Lord Coke; and this signification corresponds very well to the meaning given by Blount, of examiner (interrogator) of the sheriff's accounts.

Foreign Assignment.

An assignment made in a foreign country, or in another state. 2 Kent, Comm. 405 et seq.

Foreign Coins.

Coins issued by the authority of a foreign government.

There were several acts of congress passed which rendered certain foreign gold and silver coins a legal tender in payment of debts upon certain prescribed conditions as to fineness and weight. In making a report in 1854 on this subject, the late director of the mint, Mr. Snowdon, suggested that there was no propriety or necessity for legalizing the circulation of the coins of other countries, and that in no other nation, except in the case of some colonies, was this mixture of currencies admitted by law, either on the score of courtesy or convenience; and he recommended that if the laws which legalize foreign coins should be repealed, it would be proper to require an annual assay report upon the weight and fineness of such foreign coins as frequently reach our shores, with a view to settle and determine their marketable value. Ex. Doc. No. 68, 33d Cong., 1st Sess. This suggestion was subsequently repeated, and finally led to the passage of the act of February 21, 1857 (11 U. S. Stat. at Large, 163), the third section of which is as follows: "That all former acts authorizing the currency of foreign gold or silver coins, and declaring the same a legal tender in payment for debts, are repealed; but it shall be the duty of the director of the mint to cause assays to be made from time to time of such foreign coins as may be known to our commerce, to determine their average weight, fineness, and value, and to embrace in his annual report a statement of the results thereof."

Foreign Enlistment Act.

St. 59 Geo. III, c. 69, for preventing British citizens from enlisting as sailors or soldiers in the service of a foreign power. Wharton; 4 Steph. Comm. 226.

Foreign Service.

In feudal law. That whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. Kitch. Cts. 299. Foreign service seems also to be used for knight's service, or escuage uncertain. Jacob.

Foreign Vessel.

The appellation of foreign vessel may

registered or licensed, in reference to the privileges derived from the revenue system; but it is as certain, that in a variety of instances our laws also contemplate the use of the words in their appropriate sense, to wit, vessels navigating under the flag and with the papers of a foreign sovereign. Schooner Sally and Cargo, 1 Gallison (U. S. C. C.) 59.

Foreign Voyage.

A voyage whose termination is within a foreign country. 3 Kent, Comm. 177, note. The length of the voyage has no effect in determining its character, but only the place of destination. 3 Sumn. (U. S.) 342; 2 Bost. Law Rep. 146; 2 Wall. C. C. (U. S.) 264; 1 Pars. Mar. Law, 31.

Foreign voyage means, in the language of trade and commerce, a voyage to some port or place within the territory of a foreign nation. Taber v. U. S., 1 Story (U. S. C. C.) 7.

FOREIGN BILL.

A "foreign bill," within the meaning of the act of 1907, known as the Negotiable Instruments Act, is any other bill than an inland bill of exchange, as defined by the act. Act of 1907, § 128 (J. & A. ¶ 7768); Sublette, etc., Bank v. Fitzgerald, 168 Ill. App. 243.

A check drawn and payable in Texas, and indorsed in Illinois, is a "foreign bill," within the meaning of the quoted expression as defined in section 128 of the act of 1907 (J. & A. ¶ 7768), known as the Negotiable Instruments Act. lette, etc., Bank v. Fitzgerald, 168 Ill. App. 243.

FOREIGN GUARDIAN.

A guardian appointed in a country or state other than that of the forum. Devine v. American, etc., Service, 174 Ill. App. 407.

FOREIGN LAWS.

The laws of a sister state or of a foreign country are "foreign laws," within sometimes be applied to all vessels not | the meaning of the rule that foreign laws are questions of fact, which must be proved by evidence. People v. Fidelity, etc., Co., 153 Ill. 40.

FOREIGN PORT.

The ports in the different states of the United States are each a "foreign port," in the sense of the rule of the maritime law as to the powers of the master to make repairs, purchase supplies, or borrow money on the credit of the owner, when in such ports. Leddo v. Hughes, 15 Ill. 44.

A port or place which is wholly without the United States. 19 Johns. (N. Y.) 375; 2 Gall. (U. S.) 4, 7; 1 Brock. (U. S.) 235. A port without the jurisdiction of the court. 1 Dods. Adm. 201; 4 C. Rob. Adm. 1; 1 W. Rob. Adm. 29; 6 Exch. 886; 1 Blatchf. & H. (U. S.) 66, 71. Practically, the definition has become, for most purposes of maritime law, a port at such distance as to make communication with the owners of the ship very inconvenient or almost impossible. See 1 Pars. Mar. Law, 512, note.

FOREIGNER.

One who is not a citizen. Cowell.

In the Old English Law.

It seems to have been used of every one not an inhabitant of a city, at least with reference to that city. 1 H. Bl. 213. See, also, Cowell, "Foreigne."

In the United States.

Any one who was born in some other country than the United States, and who owes allegiance to some foreign state or country. 1 Pet. (U. S.) 343, 349. An alien.

FORENSIC MEDICINE.

Medical jurisprudence. "That science which teaches the application of every branch of medical knowledge to the purposes of the law; hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, med-

icine, surgery, chemistry, physics, and botany lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law to arrive at a proper conclusion on a contested question affecting life or property. Tayl. Med. Jur. 1.

FORESAID.

Used in Scotch law as "aforesaid" is in English, and sometimes, in a plural form, "foresaids." 2 How. St. Tr. 715. "Foresaidis" occurs in old Scotch records. "The Loirdis assessouris forsaidis." 1 Pitc. Crim. Tr. pt. 1, p. 107.

FORESHORE.

"The seashore up to the point of high water of medium tides, between spring and neap tides, is called the foreshore; and is ordinarily and prima facie vested in the crown, subject to the rights of the queen's subjects of fishing and navigation, not only in the sea, but in all tidal navigable rivers, and of passing over the foreshore itself; but it may belong to a subject, either by itself, or as part of a manor. See A.-G. v. Burridge, 10 Price, 350: A.-G. v. Parmenter, 10 Price, 378: A.-G. v. Tomline, 14 Ch. D. 58; 46 L. J. Ch. 654. Va. Co. Litt. 261a, note; Woolrych on Waters, 2 Ed. 23; Coulson & Forbes on Waters, 12; Chitty, Prerog. 207" (Elph. 580). As to A.-G. v. Tomline, V. per Esher, M. R., and Lopes, L. J., West Norfolk Manure Co. v. Archdale, 16 Q. B. D. 758, 760.

"The word 'foreshore,' used in the later English decisions, appears, by 29 & 30 Vict. c. 62, § 7, to denote 'the shore and bed of the sea, and of every channel, creek, bay, estuary, and of every navigable river of the United Kingdom, as far up the same as the tide flows.'" Gould Waters, § 27, citing also Trustees v. Bortle, 2 Q. B. 4; Penrhyn v. Holm, 46 L. J. Ex. 506; 37 L. T. 133; 25 W. R. 498.

FOREST.

A certain territory of wooded ground and fruitful pastures, privileged for wild

beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. Manw. For. Laws, c. 1, No. 1; Termes de la Ley; 1 Bl. Comm. 289.

A royal hunting ground which lost its peculiar character with the extinction of its courts, or when the franchise passed into the hands of a subject. Spelman; Cowell; Manw. For. Laws, c. 1; 2 Bl. Comm. 83.

FOREST COURTS.

In English law. Courts instituted for the government of the king's forests in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or venison, to the vert or greensward, and to the covert in which the deer were lodged. They comprised the courts of attachments, of regard, of swein mote, and of justice seat; but since the revolution of 1688, these courts, it is said, have gone into absolute desuetude. 3 Steph. Comm. 439-441; 3 Bl. Comm. 71-74. But see 8 Q. B. 981.

FORESTALLING THE MARKET.

Buying victuals on their way to the market before they reach it, with the intent to sell again at a higher price. Cowell; Blount; 4 Bl. Comm. 158. Every device or practice, by act, conspiracy, words, or news, to enhance the price of victuals or other provisions.. 3 Inst. 196; Bac. Abr.; 1 Russ. Crimes, 169; 4 Bl. Comm. 158; Hawk. P. C. bk. 1, c. 80, § 1. See 13 Viner, Abr. 430; 1 East, 132; 14 East, 506; 15 East, 511; 3 Maule & S. 67; Dane, Abr. Index.

FORFEIT.

To lose as the penalty of some misdeed or negligence. The word includes not merely the idea of losing, but also of having the property transferred to another without the consent of the owner and wrongdoer. This is the essential meaning of the word, whether it be that an

offender is to forfeit a sum of money, or an estate is to be forfeited to a former owner for a breach of condition, or to the king for some crime. Cowell says that forfeiture is general and confiscation a particular forfeiture to the king's exchequer. The modern distinction, however, seems to refer rather to a difference between forfeiture as relating to acts of the owner, and confiscation as relating to acts of the government. 1 Story (U.S.) 134; 13 Pet. (U.S.) 157; 11 Johns. (N. Y.) 293. Confiscation is more generally used of an appropriation of an enemy's property; forfeiture, of the taking possession of property to which the owner, who may be a citizen, has lost title through violation of law. See 1 Kent. Comm. 67; 1 Story (U. S.) 134.

The word means not only an actual taking away of property on breach of a Condition, but also the doing or suffering a thing which creates a liability to such a deprival. Re Levy, 54 L. J. Ch. 968; 30 Ch. D. 119.

In that case, Kay, J., said: "The word 'forfeit,' the noun substantive, is defined in Dr. Johnson's Dictionary to be, 'something lost by the commission of a crime: something paid for the expiation of the crime; a fine; a mulct.' By the same authority, the verb 'to forfeit' is defined to mean, 'to lose by some breach of condition; to lose by some offence.' He gives certain illustrations, as usual in his dictionary, and this is one: 'A father cannot alien the power he has over his child; he may perhaps to some degree forfeit it, but cannot transfer it.—Locke.' There forfeit is contrasted with 'lose.' Then 'forfeit,' the participial adjective, is defined to be, 'liable to penal seizure; alienated by a crime; lost either as to the right or possession, by breach of conditions.' * * Now clearly the word 'forfeit' does not merely mean that which is actually taken from the man by reason of some breach of condition, but includes also that which becomes liable to be so taken."

But "forfeit" would seem to involve the idea of permanent loss or liability thereto. Thus s. 9, 11 G. 4 & 1 W. 4. c. 65 (repealing and re-enacting and extending 9 G. 1, c. 29), provides that an infant, feme covert or lunatic, shall not "forfeit" copyholds by non-appearance, etc.; but this does not take away the lord's right of seizure quousque. Kensington v. Mansell, 13 Ves. 240; Twining v. Muscott, 14 L. J. Ex. 185; 12 M. & W. 832; Dimes v. Grand Junction Canal, 16 L. J. Q. B. 107; 9 Q. B. 469; King v. Dilliston, Show. 31, 83; Salk. 386; 3 Mod. 222.

Forfeit.

The word generally means, the taking all right from one person, and transferring all right to another. Walter v. Smith, 5 B. & A. 439.

As a Noun.

That which is forfeited or lost, or the right to which is alienated by a crime, offense, neglect of duty, or breach of contract, hence, a fine; a mulct; a penalty; as, he that murders pays the forfeit of his life; or, where a statute creates a penalty for a transgression, either in money or in corporal punishment, the offender who on conviction pays the money or suffers the punishment pays the forfeit. Sherman v. Gassett, 9 Ill. 528.

As a Verb.

To lose or render confiscable by some fault, offense or crime; to lose the right of some species of property or that which belongs to one. Sherman v. Gassett, 9 Ill. 527.

Repels Idea of Compensation.

The word "forfeit" signifies the incurring of a forfeiture or penalty and is antagonistic to the idea of mere payment of compensation for damages for breach of contract. Van Kannel v. Highley, 172 Ill. App. 92.

FORFEITED TO THE STATE.

Real property is "forfeited to the State," within the meaning of section 253 of the Revenue Act (J. & A. \P 9472), relating to the foreclosure in equity of tax liens on real estate, when, at any regular tax sale under the act, the collector shall

offer the property for sale, and it shall not have been sold for want of bidders. Biggins v. People, 106 Ill. 279.

FORFEITURE.

A fine or mulct; an amendment; a penalty. People v. Nedrow, 122 Ill. 367.

The loss of something as a penalty for doing or attempting to do, or omitting to do a required act. Hudson v. Shepard, 90 Ill. App. 628; North, etc., Co., v. O'Hara, 73 Ill. App. 709.

A punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they become vested in the party injured as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl. Comm. 267. A sum of money to be paid by way of penalty for a crime. 21 Ala. (N. S.) 672; 10 Grat. (Va.) 700.

Forfeiture by alienation. By the English law, estates less than a fee may be forfeited to the party entitled to the residuary interest by a breach of duty in the owner of the particular estate. 2 Bl. Comm. 274.

In this country, such forfeitures are almost unknown, and the more just principle prevails that the conveyance by the tenant operates only on the interest which he possesses, and does not affect the remainderman or reversioner. 4 Kent, Comm. 81, 82, 424; 3 Dall. (Pa.) 486; 5 Ohio, 30; 1 Pick. (Mass.) 318; 1 Rice (S. C.) 459; 2 Rawle (Pa.) 168; 1 Wash. (Va.) 381; 11 Conn. 553; 22 N. H. 500; 21 Me. 372. See, also, Stearns, Real Actions, 11; 4 Kent, Comm. 84; 2 Sharswood, Bl. Comm. 121, note; Williams, Real Prop. 25; 5 Dane, Abr. 6-8; 1 Washb. Real Prop. 92, 197.

Forfeiture for crimes. Under the constitution and laws of the United States (Const. art. 3, § 3; Act April 30, 1790, § 24 [1 Story, U. S. Laws, 88]), forfeiture for crimes is nearly abolished, and when it occurs, the state recovers only the title which the owner had. 4 Mason (U. S.) 174. See, also, Dalr. Feud. Prop. c. 4, pp. 145-154.

Forfeiture by nonperformance of conditions. An estate may be forfeited by a breach or nonperformance of a condition annexed to the estate, either expressed in the deed at its original creation, or implied by law, from a principle of natural reason. 2 Bl. Comm. 281; Litt. § 361; 1 Prest. Est. 478; White & T. Lead. Cas. 794, 795; 5 Pick. (Mass.) 528; 2 N. H. 120; 5 Serg. & R. (Pa.) 375; 32 Me. 394; 18 Conn. 535; 12 Serg. & R. (Pa.) 190. Such forfeiture may be waived by acts of the person entitled to take advantage of the breach. 1 Conn. 79; 1 Johns. Cas. (N. Y.) 126; Walk. Am. Law, 299; 1 Washb. Real Prop. 454.

Forfeiture by waste. Waste is a cause of forfeiture. 2 Bl. Comm. 283; 2 Inst. 299; 1 Washb. Real Prop. 118.

See, generally, 2 Bl. Comm. c. 18; 4 Bl. Comm. 382; Bouv. Inst. Index; 2 Kent, Comm. 318; 4 Kent, Comm. 422; 10 Viner, Abr. 371, 394; 13 Viner, Abr. 436; Bac. Abr. "Forfeiture"; Comyn, Dig.; Dane, Abr.; 1 Brown, Civ. Law, 252; Considerations on the Law of Forfeiture for High Treason (London Ed. 1746); 1 Washb. Real Prop. 91, 92, 118, 197.

FORFEITURE OF MARRIAGE.

A penalty incurred by a ward in chivalry when he or she married contrary to the wishes of his or her guardian in chivalry. 2 Bl. Comm. 70.

FORGE.

To falsely make, without any regard to the intent. Fox v. People, 95, Ill. 76.

"The Century Dictionary thus defines the verb 'forge': "To fabricate by false imitation; specifically in law, to make a false instrument, in similitude of an instrument, by which one person could be obligated to another, for the purpose of fraud and deceit." The words 'forge, forger, and forgery,' when used in law, have no honest meaning, but imply fraudulent deceit; and to say that 'the defendant forged a check' would imply the false making fully to the same extent as if it

was said, 'he falsely forged a check.'" People v. Mitchell, 92 Cal. 592.

Distinguished from Furnace.

"The difference between a forge and a furnace, so far as the ordinary use of those words in connection with metal is concerned, is this: A furnace is used to melt ores in making metals, or to melt metals in working them; a forge is used to heat metals to hammer them into a desired form, not to melt them." Boston v. Sarni, 175 Mass. 357.

FORGED.

The term "forged" in law indicates a fraudulent purpose in making the paper. People v. Pichette, 111 Mich. 463 (1897), quoting Haskins v. Ralston, 69 Mich. 67 (13 Am. St. Rep. 376).

FORGED INSTRUMENT.

A telegram sent by a post office clerk to a bookmaker, offering a bet at the current odds on a certain horse for a certain race and purporting to have been handed in by another man at the post office prior to the running of the race though in reality composed by the clerk himself after he had obtained the news of the result of the race, held to be a forged instrument [within the meaning of § 38 of the Forgery Act, 1861 (24 & 25 Vict. c. 98), which provides that whosoever with intent to defraud shall obtain or cause to be paid to any person any money or property under, upon, or by virtue of any forged instrument knowing it to be forged shall be guilty of felony]. Reg. v. Riley (1896), 1 Q. B. 309.

FORGERY.

A false making; a making male animo of any written instrument for the purpose of fraud and deceit. Fox v. People, 95 Ill. 76.

The false making or materially altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or a foundation of legal liability. White v. Wagar, 185 Ill. 204.

Section 105 of division 1 of the Criminal Code (J. & A. ¶ 3686), defining "forgery," makes no distinction between making, altering or counterfeiting an instrument with intention to prejudice, and in uttering, publishing or passing as genuine any such forged instrument with intent to prejudice, knowing the same to be false, altered, forged or counterfeited, and any person guilty of either offense is guilty of "forgery" as defined by the section. People v. Pfeiffer, 243 Ill. 205. As defining elements of offense under the statute see People v. Dougherty, 246 Ill. 458; White v. Wagar, 185 Ill. 195; Beattie v. National Bank, 174 Ill. 571; Kotter v. People, 150 Ill. 441; Anson v. People, 148 Ill. 494; Shirk v. People, 121 Ill. 65; Parker v. People, 97 Ill. 32; Brown v. People, 86 Ill. 239; Wilson v. South Park Commissioners, 70 Ill. 46; Waterman v. People, 67 Ill. 91; Crofts v. People, 3 Ill. 442; Hoge v. First, etc., Bank, 18 Ill. App. 501.

The fraudulent falsifying of an instrument to another's prejudice; the fraudulent making of a false writing which, if genuine, would be apparently of some legal efficacy; the false making, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. Goodman v. People, 228 III. 157.

Simply to write the words, "waiving demand and notice," upon the back of a note, when they are wholly immaterial, is not forgery, while they may be so written as to be the subject of forgery. Commonwealth v. Spilman, 124 Mass.

A ticket which has been changed, by a paster, to read as a vote for a man for a particular office different from the man for whom it read as a vote in the condition in which it was when cast, is a forgery. And the same is true when the ballot, after it is cast, is destroyed, and another and different ballot is put in its place. Behrensmeyer v. Kreitz, 135 Ill. 611.

Blackstone's Definition.

The fraudulent making or altering of a

rights. Goodman v. People, 228 Ill. 157. See also People v. Pfeiffer, 243 Ill. 206 (quoting same definition from Com. v. Sankey, 22 Pa. St. 390).

At Common Law.

At common law an instrument which is void or without apparent legal efficacy on its face, or which is not shown, by averment of extrinsic facts, to be capable of affecting the rights of another, cannot be the subject of forgery. Goodman v. People, 228 Ill. 158.

Elements.

In order to constitute forgery at common law the three following elements must exist: (1) There must be a false writing or alteration of an instrument; (2) the instruments as made must be apparently capable of defrauding; (3) there must be an intent to defraud. People v. Pfeiffer, 243 Ill. 203; Goodman v. People, 228 III. 157.

FORMED FOR THE PURPOSE OF RELIGIOUS WORSHIP.

A Young Men's Christian Association is "formed for the purpose of religious worship," within the meaning of section 35 of the Corporations Act (J. & A. ¶ 2453), relating to the organization of religious corporations. Hamsher v. Hamsher, 132 Ill. 286.

FORISFACTUS.

A criminal. One who has forfeited his life by commission of a capital offense. Spelman; Leg. Rep. c. 77; Du Cange. Si quispiam forisfactus poposcerit regis misericordiam, etc., if any criminal shall have asked pardon of the king, etc. Leg. Edw. Conf. c. 18.

Forisfactus servus. A slave who has been a free man, but has forfeited his freedom by crime. Leg. Athelstan, c. 3; Du Cange.

FORMEDON.

An ancient writ provided by St. Westwriting to the prejudice of another's | minster II (13 Edw. I) c. 1, for him who hath right to lands or tenements by virtue of a gift in tail. Stearns, Real Actions,

It is a writ in the nature of a writ of right, and is the highest remedy which a tenant in tail can have. Co. Litt. 316.

This writ lay for those interested in an estate tail who were liable to be defeated of their right by a discontinuance of the estate tail, who were not entitled to a writ of right absolute, since none but those who claimed in fee simple were entitled to this. Fitzh. Nat. Brev. 255. It is called "formedon" because the plaintiff in it claimed per formam doni.

The writ was abolished in England by St. 3 & 4 Wm. IV c. 27.

Formedon in the Descender.

A writ of formedon which lies where a gift is made in tail, and the tenant in tail aliens the lands, or is disseised of them and dies, for the heir in tail to recover them, against the actual tenant of the freehold. Fitzh. Nat. Brev. 211; Litt. § 595.

If the demandant claims the inheritance as an estate tail which ought to come to him by descent from some ancestor to whom it was first given, his remedy is by a writ of formedon in the descender. Stearns, Real Actions, 322.

It must have been brought within twenty years from the death of the ancestor who was disseised. 21 Jac. I. c. 16; 3 Brod. & B. 217; 6 East, 83; 4 Term R. 300; 2 Sharswood, Bl. Comm. 193, note.

Formedon in the Remainder.

A writ of formedon which lies where lands are given to one for life or in tail. with remainder to another in fee or in tail, and he who hath the particular estate dies without issue, and a stranger intrudes upon him in remainder, and keeps him out of possession. Fitzh. Nat. Brev. 211; Stearns, Real Actions, 323; Litt. § 597; 3 Bl. Comm. 293.

Formedon in the Reverter.

A writ of formedon which lies where there is a gift in tail, and afterwards,

without issue of his body, the reversion falls in upon the donor, his heirs or assigns.

In this case, the demandant must suggest the gift, his own right as derived from the donor, and the failure of heirs of the dones. 3 Sharswood, Bl. Comm. 293; Stearns, Real Actions, 323; Fitzh. Nat. Brev. 212; Litt. § 597.

FORMER ADJUDICATION.

A previous determination of the matter in litigation by a competent court between the same parties. To constitute a former adjudication which will bar subsequent litigation, it is essential.

- (1) That the judgment be final and upon the merits. 115 Ill. 29; 103 Mass. 280; 78 Mich. 234; 74 N. Y. 449; 82 N. Y. 55; 94 U. S. 351. Thus, a mere nonsuit (48 Me. 353) or dismissal because the action is premature (35 N. Y. 279) is not a bar to a subsequent action.
- (2) The court must have had jurisdiction of the parties and the subject matter (93 U. S. 277; 132 Ill. 213), but it may be a foreign court. 26 N. Y. 146.
- (3) The same issues must have been involved (25 N. Y. 613), but the issues include every point which is either expressly in issue, or which must have been decided to support the judgment (24 Wis. 124. See 2 Smith's Lead. Cas. 663, and note); and the adjudication is conclusive not only as to what was actually litigated, but as to all that might have been litigated under the pleadings and issues made. 70 Ill. 385; 102 N. Y. 452.
- (4) As respects adjudications in personam, the adjudication must have been between the same parties or their privies (24 How. [U. S.] 241), and in the same capacity (58 N. Y. 463), but their position as plaintiff and defendant need not be the same if they be adversary parties. 86 N. Y. 390; 61 Iowa, 290.

Privies of a party are bound to the same extent as the party himself. "Privy." 69 Ill. 457; 68 Iowa, 145.

Lessor and lessee (46 Mo. 444), bailor and bailee (12 N. Y. 343), assignor and assignee (17 Mass. 365), mortgagor and by the death of the donee or his heirs | mortgagee (105 N. Y. 39), ancestor and heir (61 Ala. 472), are ordinarily privies, but husband and wife (110 N. Y. 394), or guardian and ward (27 Pa. St. 226), are not.

A judgment in rem is conclusive as to the property in question and the title thereto without issues or parties. 23 Wall. (U. S.) 463.

FORMING.

A school set back 80 feet from a street, and in the greater part hidden by houses between it and the street, but having a direct private access to the street, is a house "forming" part of a street within s. 105, Metrop. Man. Act, 1855 (London School Board v. St. Mary, Islington, 45 L. J. M. C. 1; 1 Q. B. D. 65). In that case, Cockburn, C. J., said,—"I think that whether a house is 'within' a street, or whether it is 'forming' or 'fronting' a street, is much the same thing."

FORMULAE.

In Roman law. When the legis actiones were proved to be inconvenient, a mode of procedure called "per formulas" (i. e., by means of formulae) was gradually introduced, and eventually the legis actiones were abolished by the Lex Aebutia. B. C. 164, excepting in a very few exceptional matters. The formulae were four in number, namely: (1) The Demonstratio, wherein the plaintiff stated, i. e., showed, the facts out of which his claim arose; (2) the Intentio, where he made his claim against the defendant; (3) the Adjudicatio, wherein the judex was directed to assign or adjudicate the property, or any portion or portions thereof, according to the rights of the parties; and (4) the Condemnatio, in which the judex was authorized and directed to condemn or to acquit according as the facts were or were not proved. These formulae were obtained from the magistrate (in jure), and were thereafter proceeded with before the judex (in judicio). Brown.

FORSWEAR.

In criminal law. To swear to a falsehood. This word has not the same meaning as "perjury." It does not, ex vi termini, signify a false swearing before an officer or court having authority to administer an oath, on an issue. A man may be forsworn by making a false oath before an incompetent tribunal, as well as before a lawful court. Hence, to say that a man is forsworn will or will not be slander, as the circumstances show that the oath was or was not taken before a lawful authority. Heard, Libel & S. §§ 16, 34; Cro. Car. 378; Lutw. 292; 1 Rolle, Abr. 39, pl. 7; Bac. Abr. "Slander" (B 3); Cro. Eliz. 609; 1 Johns. (N. Y.) 505; 2 Johns. (N. Y.) 10; 13 Johns. (N. Y.) 48, 80; 12 Mass. 496; 1 Hayw. (N. C.) 116.

FORTHWITH.

As soon as, by reasonable exertion, confined to the object, it may be accomplished. This is the import of the term. It varies, of course, with every particular case. 4 Tyrwh. 837; Style, Pr. Reg. 452, 453.

In a rule of court it has been construed to mean twenty-four hours. 2 Edw. Ch. (N. Y.) 328. But no such construction has been given to the term when used in a statute. "Without delay" is a reasonable meaning in a statute. 39 How. Prac. (N. Y.) 392, affirming 11 Abb. Prac. (N. Y.) 473; 20 How. Prac. (N. Y.) 222.

The term "forthwith," as used in policies of fire insurance, means within a reasonable time, or without unreasonable delay, or with the use of due diligence. Scammon v. Germania, etc., Co., 101 Ill. 626; Niagara, etc., Co. v. Scammon, 100 Ill. 648; Knickerbocker, etc., Co. v. Gould, 80 Ill. 391; Peoria, etc., Co. v. Lewis, 18 Ill. 561.

"'Forthwith, as soon as may be,' for the largest sum that we can reasonably obtain, allows a reasonable latitude, as to the time and manner of making sale; and if the vessel was lost that put an end to the power, and of course, to the obligation, to sell." Adams v. Foster, 5 Cush. 157.

With convenient speed and with due diligence. Blackister v. Potts, 2 Miles (Pa.) 389.

The words "forthwith" and "immediately" have the same meaning. They are stronger than the expression "within a reasonable time," and imply prompt, vigorous action, without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case. Reg. v. Justices of Berkshire, 4 Q. B. Div. 471.

Where a judge has to do a thing "forthwith" after the happening of something else, the word will have a different meaning according as the act to be done is: 1. Ministerial and demandable ex debito justitiæ; or 2. Judicial. If the act comes within the first of these classes the word will mean, "forthwith upon the application of the party entitled to have the act done." Thus a successful defendant in an assault summons is entitled, under s. 44, 24 & 25 V. c. 100, to a certificate of dismissal on applying for it. Hancock v. Somes, 28 L. J. M. C. 196: Costar v. Hetherington, 28 L. J. M. C. 198: overruling R. v. Robinson, 10 L. J. M. C. 9; 12 A. & E. 672.

Where, however, the act to be done is judicial and discretionary, "forthwith" is synonymous with "immediately." R. v. Francis, Ca. temp. Hardwick, 115; Grace v. Clinch, 12 L. J. Q. B. 273; 4 Q. B. 606; 3 G. & D. 591: Chaplin v. Levy, 23 L. J. Ex. 200; 9 Ex. 673: Hancock v. Somes, sup.: Heden v. Atlantic Royal Mail Steam Nav. Co., 29 L. J. Q. B. 191: per Cockburn, C. J., R. v. Berkshire, 27 W. R. 798.

In a contract, and the ordinary transactions of life, "forthwith" does not usually mean "immediately" (Roberts v. Brett, 34 L. J. C. P. 241; 11 H. L. Ca. 337; 20 C. B. N. S. 148); but means "with all reasonable celerity." Per Tindal, C. J., Burgess v. Boetefeur, 7 M. & G. 494.

"I think the word 'forthwith' is to be construed according to circumstances. A covenant to insure a man's life, for instance, cannot be complied with in a moment. But where an act required to be done 'forthwith,' is one which is capable of being done without any delay, no delay can be permitted" (per Jessel, M. R.,

Re Southam, Ex p. Lamb, 51 L. J. Ch. 207; 19 Ch. D. 169; 30 W. R. 126). In that case an Appeal Notice in Bankry. was not sent to the country till the next day after the appeal was entered in London, and it was held not to have been sent "forthwith." Vth. Ex p. Williams, 26 S. J. 345: Ex p. Hill, Re Darbyshire, 53 L. J. Ch. 247.

"A covenant 'forthwith' to put premises into repair must receive a reasonable construction, and it is not limited to any specified time; therefore it is for the jury to say, upon the evidence, whether the defendant has done what he reasonably ought in performance of it." Pitman v. Sutton, 9 C. P. 706.

"Forthwith" replace articles, comprised in a bill of sale, that may be destroyed or deteriorated, means that this should be done with as little delay as possible. Per Hannen, Pr., Furber v. Cobb, 56 L. J. Q. B. 275; 18 Q. B. D. 494; 56 L. T. 689; 35 W. R. 398.

In an action against an overseer for not giving a copy of a rate "upon demand, forthwith," it was held that that meant within such time as the jury might think reasonable (Tennant v. Bell, 16 L. J. M. C. 31; 9 Q. B. 684). So the proprietor of a lunatic asylum is, by s. 72, 8 & 9 V. c. 100, to discharge his patient "forthwith" on the receipt of the order in that section mentioned; that is, the proprietor "has no discretion, but would be bound to release the patient 'forthwith' and against the patient's will,-not cruelly, as for instance, if it were raining heavily, but within such a time as a reasonable man would say was practicable." Per Esher, M. R., Lowe v. Fox, 54 L. J. Q. B. 563; 15 Q. B. D. 667; affd. 12 App. Ca. 206.

Where a consequence is "forthwith" to follow an event, the word imperatively excludes a time within which something else may be done inconsistent with that consequence. Thus by s. 36, Municipal Corporations Act, 1882 (45 & 46 V. c. 50), a Town Council, on receiving the resignation of a person elected to a corporate office, is "forthwith" to declare that office vacant; and therefore the

resignation cannot be withdrawn. R. v. Wigan, 54 L. J. Q. B. 338; 14 Q. B. D. 908.

In a notice, to a person charged criminally and out on bail to appear on pain of forfeiting his recognizance, "forthwith" means within a reasonable time from the service, and not from the date of the notice. R. v. Price, 8 Moo. P. C. C. 203.

"Whether the statement was 'forthwith rendered' [in a policy of insurance which provided that in case of loss by fire proof shall be forthwith rendered by the insured to the company] depended on whether, taking all these circumstances and considerations into account, the plaintiff used due and reasonable diligence. If he did, then it was 'forthwith rendered,' within the fair meaning of the policy; and whether he did or did not was a question of fact for the jury." Morton J., in Harnden v. Milwaukee Mechanics Ins. Co., 164 Mass. (1895) 382, citing Carpenter v. German American Ins. Co., 135 N. Y. 298, 302; Howe Ins. Co. v. Davis, 98 Penn. St. 280; Edwards v. Baltimore Ins. Co., 3 Gill (Md.) 176; Donahue v. Windsor County Ins. Co., 56 Vt. 374.

FORTUITOUS EVENT.

In civil law. That which happens by a cause which cannot be resisted. Code La. art. 2522, No. 7.

That which neither of the parties has occasioned or could prevent. Lois des Bat. pt. 2, c. 2. An unforseen event which cannot be prevented. Dict. de Jur. "Cas Fortuit."

There is a difference between a fortuitous event, or inevitable accident, and irresistible force. By the former, commonly called the "act of God," is meant any accident produced by physical causes which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency as is, from its nature and power, absolutely uncontrollable. Of this nature are losses occasioned by the in-

roads of a hostile army, or by public enemies. Story, Bailm. § 25; Lois des Bat. pt. 2, c. 2, § 1.

Fortuitous events are fortunate or unfortunate. The accident of finding a treasure is a fortuitous event of the first class. Lois des Bat. pt. 2, c. 2, § 2.

Involuntary obligations may arise in consequence of fortuitous events. For example, when, to save a vessel from shipwreck, it is necessary to throw goods overboard, the loss must be borne in common. There arises, in this case, between the owners of the vessel and of the goods remaining on board, an obligation to bear proportionably the loss which has been sustained. Lois des Bat. pt. 2, c. 2, § 2.

FORUM.

At Common Law.

A place; a place of jurisdiction; the place where a remedy is sought; jurisdiction; a court of justice.

Forum conscientiae. The conscience.

Forum contentiosum. A court. 3 Bl. Comm. 211.

Forum contractus. The courts of the place of making a contract. 2 Kent, Comm. 463.

Forum domesticum. A domestic court. 1 W. Bl. 82.

Forum domicilii. The court of the place of domicile. 2 Kent, Comm. 463.

Forum ecclesiasticum. An ecclesiastical court.

Forum rei gestae. The court of the place of transaction. 2 Kent, Comm. 463.

Forum rei sitae. The court of the place where the thing is situated.

Forum seculare. A secular court.

Forum ligentiae rei. The court or jurisdiction of the county to which defendant owes allegiance.

Forum regium. The king's court. St. Westminster II c. 43.

Forum rei, or Rei sitae (Law Lat.). The forum or court of the thing (res, rei); the court of the place where a thing claimed is; the tribunal where the property is. Story, Confl. Laws, § 325k. The place where a thing in controversy is

situated, considered as a place of jurisdiction and remedy. 2 Kent, Comm. 463.

In Roman Law.

The paved open space in cities, particularly in Rome, where were held the solemn business assemblies of the people, the markets, the exchange (whence cedere foro, to retire from 'change, equivalent to "to become bankrupt"), and where the magistrates sat to transact the business of their office. It came afterwards to mean any place where causes were tried, locus exercendarum litium. Isidor, lib. 18, Orig. A court of justice.

The obligation and the right of a person to have his case decided by a particular court.

It is often synonymous with that signification of judicium which corresponds to our word "court" (q. v.) in the sense of jurisdiction; e. g., foro interdicere (1. 1, § 13, D. 1. 12; C. 9, § 4; D. 48. 19); fori praescriptio (1. 7, pr. D. 2, 8; 1. 1, C. 3, 24); forum rei accusator sequitur (1. 5, pr. C. 3, 13). In this sense, the forum of a person means both the obligation and the right of that person to have his cause decided by a particluar court. 5 Gluck, Pand. 237. What court should have cognizance of the cause depends. in general, upon the person of the defendant, or upon the person of some one connected with the defendant.

By modern writers upon the Roman law, jurisdiction dependent on the person of the defendant is distinguished as (1) that of common right, forum commune, and (2) that of special privilege, forum privilegiatum.

(1) Forum commune. The jurisdiction of common right was either general, forum generale, or special, forum speciale.

(a) Forum generale. General jurisdiction was of two kinds, the forum originis, which was that of the birthplace of the party, and the forum domicili, that of his domicile. The forum originis was either commune or proprium. The former was that legal status which all free-born subjects of the empire, wherever residing, had at Rome when they were found there, and had not the jus revocan-

di domum (i. e., the right of one absent from his domicile of transferring to the forum domicilii a suit instituted against him in the place of his temporary sojourn). L. 2, §§ 3, 4, 5, D. 5, 1; l. 28, § 4, D. 4, 6; 3 Gluck, Pand. 188. The forum originis proprium or forum originis speciale, was the court of that place of which at the time of the party's birth his father was a citizen, though that might possibly be neither his own birthplace, nor the actual domicile of his father.

Forum domicilii. The place of the domicile exercised the greatest influence over the rights of the party. As to what constitutes domicile, see "Domicile." In general, one was subject to the laws and courts of his domicile alone, unless specially privileged. L. 29, D. 50, 1.

(b) Forum speciale. Particular jurisdiction. These were very numerous. The more important are: Forum continentiae causarum. Sometimes two or more actions or disputed questions are so connected that they cannot advantageously be tried separately, although in strictness they belong to different jurisdictions. In such cases the modern civil law permits them to be determined in a single court, although such court would be incompetent in regard to a portion of them Forum contractus, the taken singly. court having cognizance of the action on a contract.

Forum delicti, forum deprehensionis. The jurisdiction of the person of a criminal, and may be the court of the place where the offense was committed, or that of the place where the criminal was arrested.

Forum arresti. A jurisdiction unknown to the Roman law, but of frequent occurrence in the modern civil law. It is that over persons or things detained by a judicial order, and corresponds in some degree to the "attachment" of our practice.

Forum gestae administrationis. The jurisdiction over the accounts and administration of guardians, agents, and all persons appointed to manage the affairs of third parties. The court which ap-

pointed such administrator, or wherein the case was pending in which such appointment was made, or within whose territorial limits the business of the administration was transacted, had exclusive jurisdiction over all suits arising out of his acts, or brought for the purpose of compelling him to account, or brought by him to recover compensation for his outlays. L. 1, C. 3, 21; 6 Gluck, Pand. § 521.

(2) Forum privilegiatum. Privileged jurisdictions. In general, the privileged jurisdiction of a person held the same rank as the forum domicilii, and, like that, did not supplant the particular jurisdictions above named save in certain exceptional cases. The privilege was general in its nature, and applied to all cases not specially excepted, but it only arose when the person possessing it was sued by another; for he could not assert it when he was the plaintiff, the rule being, actor sequitur forum rei, the plaintiff must resort to the jurisdiction of the defendant. It was in general limited to personal actions; all real actions brought against the defendant in the character of possessor of the thing in dispute followed the forum speciale. The privilege embraced the wife of the privileged person and his children so long as they were under his potestas. And, lastly, when a forum privilegiatum purely personal conflicted with the forum speciale, the former must yield. 6 Gluck, Pand. 339-341.

Privileged persons were:

- (a) Personae miserabiles, who were persons under the special protection of the law on account of some incapacity of age, sex, mind, or condition. These were entitled, whether as plaintiffs or defendants, to carry their causes directly before the emperor, and, passing over the inferior courts, to demand a hearing before his supreme tribunal, whenever they had valid grounds for doubting the impartiality or fearing the procrastination of the inferior courts, or for dreading the influence of a powerful adversary. 6 Gluck, Pand. § 522.
- (b) Clerici, the clergy. The privilege of clerical persons to be impleaded only

in the episcopal courts commenced under the Christian emperors.

- (c) Academici. In the modern civil law, the officers and students of the universities are privileged to be sued before the university courts. This species of privilege was unknown to the Roman law. See 6 Gluck, Pand. § 524.
- (d) Milites. Soldiers had special military courts as well in civil as criminal cases.

There are many classes of persons who are privileged in respect to jurisdiction under the modern civil law who were not so privileged by the Roman law. Such are officers of the court of the sovereign, including ministers of state and councillors, ambassadors, noblemen, etc. These do not require extended notice.

Jurisdiction ex persona alterius. person might be entitled to be sued in a particular court on grounds depending upon the person of another. Such were (1) the wife, who, if the marriage had been legally contracted, acquired the forum of her husband (l. 65, D. 5, 1; l. ult. D. 50, 1; l. 19, D. 2, 1), and retained it until her second marriage (1. 22, § 1, D. 50, 1), or change of domicile. Section 93, Voet. Com. ad Pand. D. 5, 1. (2) Servants, who possessed the jurisdiction of their master as regarded the forum domicilii, and also the forum privilegiatum, so far at least as the privilege was that of the class to which such master belonged, and was not purely personal. Gluck, Pand. § 510b. (3) The haeres, who in many cases retained the jurisdiction of his testator. When sued in the character of heir in respect to causes of action upon which suit had been commenced before the testator's death, he must submit to the forum which had acquired cognizance of the suit. Ll. 30, 34, D. 5, 1.

FOSSILS.

"The word 'fossils' may, in a strict sense, apply to stones dug or quarried. Usually, however, it appears to apply only to metallic minerals." MacS. 19, citing Rosse v. Wainman, 14 M. & W. 872, 873;

15 L. J. Ex. 67; affd. nom. Wainman v. Rosse, 2 Ex. 800.

FORWARDING AGENT.

One who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern as an owner in the vessel, car or other conveyance by which the goods are transported and no interest in the freight. Ingram v. American, etc., Co., 162 Ill. App. 480.

Nature of Relation.

A forwarding agent is not a common carrier, but a mere warehouseman or agent, who is not an insurer of the safe carriage of the goods, and is required to use only ordinary diligence in sending the property to responsible carriers, so that when he has placed the goods in the course of transportation by proper conveyance his duties are ended. Ingram v. American, etc., Co., 162 Ill. App. 481.

FOUND.

One who has been arrested on a groundless complaint issued in a county in which he does not reside and is taken to such other county is not "found" in such other county within the meaning of section 6 of the Practice Act (J. & A. ¶8543), relating to the venue of actions, when such complaint was sworn out for the sole purpose of bringing defendant into such other county for the purpose of serving him with process in a civil action. McNab v. Bennett, 66 Ill. 160.

Mineral "found," means "ascertained to lie and be." Jowett v. Spencer, 1 Ex. 647; 17 L. J. Ex. 367.

"No sufficient distress is to be found on the demised premises," s. 2, 4 G. 2, c. 28; s. 210, Com. L. Pro. Act, 1852,—goods are not so "to be found" if they are not so visible that a broker, using reasonable diligence, would be able to distrain them (Doe d. Haverson v. Franks, 2 C. & K. 678); nor if a distress be prevented by the outer door being locked. Chippendale v. Dyson, 1

Moo. & M. 77: Doe d. Cox v. Roe, 5 D. & L. 272: Hammond v. Mather, 3 F. & F. 151.

The difference between "found" and "frequenting" as used in the Vagrant Act (5 G. 4, c. 83, s. 4), was pointed out in R. v. Clark (54 L. J. M. C. 66; nom. Clark v. Reg., 14 Q. B. D. 92); where it was decided that a person "found" in a house, etc., for the purpose of committing a felony, could be convicted if only "found" there once; but that the offence of "frequenting" a street, etc., for a like purpose is not shown to have been committed if the evidence does not show that the person was there more than once.

"Found committing,"—e. g., in s. 63, 2 & 3 V. c. 47, s. 103; 24 & 25 V. c. 96.
—applies to the case of persons who are taken flagrante delicto doing the specific act. Simmons v. Milligen, 15 L. J. C. P. 102; 2 C. B. 524: Roberts v. Orchard, 33 L. J. Ex. 65; 2 H. & C. 769; 9 L. T. 737: Griffiths v. Taylor, 46 L. J. C. P. 152; 2 C. P. D. 194: Downing v. Capel, 36 L. J. M. C. 97; L. R. 2 C. P. 461.

"Found offending,"—e. g., 5 G. 4, c. 83, ss. 6, 11,—has a similar meaning; so that a constable cannot, without a warrant, arrest a man for having neglected to maintain his family (Horley v. Rogers, 29 L. J. M. C. 140; 24 J. P. 261). "Found on" licensed premises after hours (s. 25, 35 & 36 V. c. 94) would, semble, receive a similar interpretation.

"Found drunk on licensed premises," s. 12, 35 & 36 V. c. 94, means to be so found "in places where the public go, or which are open, and where the public may enter and consume drink" (per Mellor, J., Lester v. Torrens, 46 L. J. M. C. 281; 2 Q. B. D. 403); and therefore it was there held that an innkeeper, in his own inn after the same is closed, cannot commit the offence.

"Found to be due," note (d), item 72, Court Fees Order, 1884, construed "found to have been received." Re Crawshay, 57 L. J. Ch. 923; 39 Ch. D. 552; 59 L. T. 598.

"To found," or "to establish" a charity, such as a school, hospital or chapel, prima facie involves the erection of a

building for it; and a bequest for such a purpose is void as implying the bringing of lands into mortmain (Hopkins v. Philipps, 30 L. J. Ch. 671; 3 Giff. 182: Tatam v. Drummond, 34 L. J. Ch. 1; 2 H. & M. 262; 4 D. G. J. & S. 484: Re Goldsmid, Mocatta v. A.-G., 34 S. J. 63; W. N. (89) 184. Sv. qua "establish," Hartshorne v. Nicholson, 27 L. J. Ch. 810; 26 Bea. 58: Provide. Vf. 1 Jarm. 228, 229, 230). But a bequest "to found a charitable endowment" is good (Salusbury v. Denton, 26 L. J. Ch. 851; 3 K. & J. 529); and so is a bequest for "supporting or founding" ragged schools in a parish where such a school already exists. Re Hedgman, Morley v. Croxon, 8 Ch. D. 156.

FOUND WITHIN THE STATE.

To be "found" within the State, a foreign corporation must have sent its agent, on whom service is made, to the State to conduct its business therein, either continuously or for a time, so as to complete a transaction or an enterprise, or at least charged with the duty of making a particular contract in the State, or negotiating therein for the company. Galveston C. R. Co. v. Hook, 40 Ill. App. 556 (citing Midland P. Ry. Co. v. McDermid, 91 Ill. 173; Silsbie v. Quincy Elec. Co., 30 Ill. App. 208).

FOUNDED ON.

A motion is not in any way "founded on" an affidavit relating merely to procedure,—e. g., an affidavit of service,—so as to require copy of such affidavit to be served with notice of motion under Ord. 52, R. 4, R. S. C. (per Pearson, J., Witham v. Witham, 29 S. J. 707: Schirges v. Schirges, 30 S. J. 403; W. N. [86] 85). But in Re Lysaght & ors. (31 S. J. 233), North, J., declined to follow that interpretation.

Action may be said to be "founded on contract," or "founded on tort," V. s. 5, Co. Co. Act, 1867; s. 116 Co. Co. Act, 1888. In Bryant v. Herbert (47 L. J. C. P. 670; 3 C. P. D. 389; 26 W. R. 498;

49 L. T. 17) there was a curious conflict of opinion as to whether these are terms of art: Bramwell, L. J., said, "They are plain English words, and are to have the meaning ordinary Englishmen would give them"; whilst Brett, L. J., said, "With the greatest deference to my learned brother, I do not think those words can be called plain English; for they seem to me to be technical terms."

FOUNDER.

The "founder" of an endowment is the person or persons who originally created it; and "every accretion to the original subscriptions, which was not an endowment for any new and special purpose, must be taken to be upon the footing of the original foundation" (per Selborne, L. C., St. Leonards Trustees v. Charity Commrs., 54 L. J. P. C. 31; 10 App. Ca. 304). Accordingly it was held in that case that mere subscribers to an endowment subsequent to its origination, are not "founders" within the Endowed Schools Acts, 1869, 1873 (32 & 33 V. c. 56, s. 19; 36 & 37 V. c. 87, s. 7).

FOUR BOYS.

Where a testator at the time of making his will had seven sons, three of whom were married men residing away from the testator, and four were minors residing with him, a will devising property to the "four boys" is to be construed as referring, by the quoted expression, to the four minor sons residing with the testator. Bradley v. Rees, 113 Ill. 332.

FOUR SEAS.

The seas surrounding England. These were divided into the western, including the Scotch and Irish; the northern, or North Sea; the eastern, being the German Ocean; the southern, being the British Channel. Selden, Mare Clausum, lib. 2, c. 1.

"Within the four seas" means within the jurisdiction of England. 4 Coke, 125; 2 Inst. 253.

FOWL.

Fowls of the warren are "of two sorts, viz., Terrestres and Aquatiles. Terrestres of two sorts, Silvestres, and Campestres: Campestres, as partridge, quaile, raile, etc.; Silvestres, as pheasant, woodcocke, etc.; Aquatiles, as mallard, herne, etc." Co. Litt. 233 a.

"The word 'fowl' comprehends all birds and poultry." Per Holt, C. J., Keeble v. Hickeringill, 11 East, 577.

FOX'S ACT.

St. 52 Geo. III, c. 60, which secured to juries, upon the trial of indictments or information for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment.

FRACTION OF A DAY.

A portion of a day; the dividing of a day. Generally, the law does not allow the fraction of a day. 2 Sharswood, Bl. Comm. 141.

The day may be divided, however, to show which of two acts was actually done first. 3 Burrows, 1434; 4 Kent, Comm. 95, note; 11 H. L. Cas. 411.

A monthly rental payable after the termination of each month of the tenancy is demandable at midnight of the last day of the term. Hammond v. Thompson, 168 Mass. 532.

FRAME.

The words "frame," and "wooden," as applied to buildings, are interchangeable and have the same meaning. Ward v. Murphysboro, 77 Ill. App. 552.

FRAME BUILDINGS.

A section regulating the location of wooden grandstands is properly placed in a chapter of the Municipal Code of Chicago entitled "frame buildings," since such stands are frame buildings. Amsterdam v. Chicago, 160 Ill. App. 113.

FRAMED BUILDING.

A contract to construct a "framed building" does not require the construction of a stone or brick building. Cook County v. Harms, 108 Ill. 159.

FRANC.

A French coin, of the value of about eighteen cents.

FRANCHISE.

A certain privilege conferred by grant from government, and vested in individuals. Fietsam v. Hay, 122 Ill. 295; People v. Ridgley, 21 Ill. 69.

A special privilege, conferred by grant from the sovereign power, not belonging to the citizen of common right. Wilder v. Aurora, etc., Co., 216 Ill. 518; Goddard v. Chicago & N. W. Ry. Co., 202 Ill. 371; Wabash St. L. & P. Ry. Co. v. Rector, 104 Ill. 296; Board of Trade v. People, 91 To the same effect see People v. Chicago, 257 Ill. 383; People v. Union, etc., Co., 254 Ill. 404; Martens v. People, 186 Ill. 318; Lasher v. People, 183 Ill. 233; Hazleton Boiler Co. v. Hazleton Tripod Boiler Co., 137 Ill. 232; Chicago & W. I. R. Co. v. Dunbar, 95 Ill. 576. And such is usually its meaning when used in a statute, or elsewhere in the law. Board of Trade v. People, 91 Ill. 83.

A special privilege emanating from the sovereign power of the state, owing its existence to a grant, or, as at common law, to prescription, which presupposes a grant (Wilmington, etc., Co. v. Evans, 166 Ill. 556; Hazleton, etc., Co. v. Hazleton, etc., Co., 137 Ill. 232) and invested in individuals or a body politic something not belonging to the citizen of common right. Hazleton, etc., Co. v. Hazleton, etc., Co., 137 Ill. 232.

Rights and privileges acquired only by special grant from the public through the legislature which impose upon the grantee, as the consideration therefor, a duty to the public to see that they are properly used. St. Louis, A. & T. H. R. Co. v. Balsley, 18 Ill. App. 82 (citing West v. St. Louis V. & T. H. R. Co., 63 Ill. 549.

The term "franchise," as used in section 11 of article 6 of the Constitution of 1870, and in section 8 of the Appellate Court Act (J. & A. ¶ 2968), relating to the jurisdiction of Appellate Courts, is used in its strictly legal sense (People v. Chicago, 257 Ill. 383; Chicago v. Rothschild, 212 Ill. 593; Martens v. People, 186 Ill. 318; Wabash St. L. & P. Ry. Co. v. Rector, 104 Ill. 296; Board of Trade v. People, 91 Ill. 82) which is that of a special privilege conferred by grant from the sovereign power of the government, and which does not belong to the citizens of common right. People v. Chicago, 257 Ill. 382; Chicago v. Rothschild, 212 Ill. 593; Wabash St. L. & P. Ry. Co. v. Rector, 104 Ill. 296.

The word "franchise" is generally used to designate a right or privilege conferred by law. Many attempts have been made to define it, and there is not a little variation in the terms used. The truth is that the term has various significations both in legal and in popular parlance. No practical value is to be derived in this connection from considering at length the judicial definitions of the term. Without going into any extended research as to its origin, it may be said that a franchise is a special privilege conferred by governmental authority, and which does not belong to citizens of the country generally as a matter of common right. Fletcher Cyclopedia Corporations 2106.

Blackstone's Definition.

A royal privilege or branch of the king's prerogative, subsisting in the hands of a subject, (Chicago v. Rothschild, 212 Ill. 592; Lasher v. People, 183 Ill. 232; Belleville v. Citizens' H. Ry. Co., 152 Ill. 185; Fietsam v. Hay, 122 Ill. 295; People v. Holtz, 92 Ill. 428; Board of Trade v. People, 91 Ill. 82; Chicago C. Ry. Co. v. People, 73 Ill. 547; People v. Ridgley, 21 Ill. 69; Cain v. Wyoming, 104 Ill. App. 540) and being derived from the crown it must arise from the king's

grant, or held by prescription, which presupposes a grant. Chicago v. Rothschild, 212 Ill. 592; People v. Holtz, 92 Ill. 428; Board of Trade v. People, 91 Ill. 82; Chicago C. Ry. Co., 73 Ill. 547; Cain v. Wyoming, 104 Ill. App. 540.

Broad Meaning.

The term "franchise" is used with several meanings, but in its broad and popular sense it embraces the right of trial by jury, the right to habeas corpus, the right to vote at elections, the right to membership in voluntary associations or corporations, the right to hold an office, and other rights. Chicago & W. I. R. Co. v. Dunbar, 95 Ill. 575. To a similar effect see People v. Ridgley, 21 Ill. 69.

Strict Legal Sense.

In its appropriate and legal sense, the term "franchise" is confined to such rights and privileges as are conferred on corporate bodies by legislative grant. Fietsam v. Hay, 122 III. 294.

Forms.

Some of the forms of franchises existing at common law are enumerated by Blackstone as, the right to hold a court leet; to have a manor or lordship, or, at least, to have a lordship paramount; to have waifs, wrecks, estrays, treasure trove, royal fish, forfeitures, and deodands; to have a court of one's own, or liberty of holding pleas, which is a greater liberty, being an exclusive right, so that no other court shall try causes in that jurisdiction; to have a bailiwick, or liberty exempt from the sheriff of the county, wherein the grantee or his officers are to execute all process; to have a fair or market with the right of taking toll either there or at any other public places, as, at bridges, wharves or the like; or lastly, to have a forest chase, park, warren or fishery endowed with the privilege of royalty. People v. Holtz, 92 Ill. 429.

"Liberty" Synonymous.

The terms "franchise" and "liberty" are said by Blackstone to be used as synonymous terms. People v. Holtz, 92 Ill. 428.

Essentials.

To constitute a franchise there must be some parting of prerogative belonging to the king, or to the people, under our system. People v. Ridgley, 21 Ill. 69.

Ordinary Governmental Functions.

The term "franchise" does not include the exercise of ordinary governmental functions, such as improving streets, passing ordinances regulating occupations and providing for a license, and the like (People v. Chicago, 257 Ill. 383; Chicago, etc., Co. v. Lake, 130 Ill. 55), or permission to exercise a corporate power within a municipality (People v. Union, etc., Co., 254 Ill. 403; Chicago v. Rothschild, 212 Ill. 593; Belleville v. Citizens' H. Ry. Co., 152 Ill. 185; Mills v. Parlin, 106 Ill. 63; Metropolitan C. Ry. Co. v. Chicago W. D. Ry. Co., 87 Ill. 322; Chicago C. Ry. Co. v. People, 73 Ill. 548), or the right to use a trade mark (Hazleton, etc., Co. v. Hazleton, etc., Co., 137 Ill. 233), or the right to hold an office (People v. O'Hair, 128 Ill. 22; Graham v. People, 104 Ill. 322; McGrath v. People, 100 Ill. 465; People v. Ridgley, 21 Ill. 69), or the right to membership in a private corporation. Graham v. People, 104 Ill. 322.

Right of Eminent Domain.

The right of eminent domain is a franchise. People v. Chicago, 257 Ill. 383.

Corporate.

Corporate franchises in the United States emanate from the government or the sovereign power, owe their existence to a grant, or, as at common law, to prescription, which presupposes a grant, and are vested in individuals or a body politic. Chicago v. Rothschild, 212 III. 593; Belleville v. Citizens H. Ry. Co., 152 III. 185; Board of Trade v. People, 91 III. 82; Metropolitan C. Ry. Co. v. Chicago W. D. Ry. Co., 87 III. 322; Chicago C. Ry. Co. v. People, 73 III. 547.

The term "franchise," as applied to a corporation, means nothing more than the right or privilege of being a corporation, and of doing such things, and such things only, as are authorized by the

corporation's charter. People v. Union, etc., Co., 254 Ill. 404; Fietsam v. Hay, 122 Ill. 295.

The privilege or right to be a corporation is a franchise. People v. O'Hair, 128 Ill. 22; People v. School Directors, 97 Ill. App. 109, and such is the most usual kind of franchise in the United States. People v. Ridgley, 21 Ill. 69.

Dramshop License.

The grant of a dramshop license is not a grant of a "franchise," within the meaning of section 11 of article 6 of the Constitution of 1870, and of section 8 of the Appellate Court Act (J. & A. ¶ 2968), relating to the jurisdiction of Appellate Courts. People v. Chicago, 257 Ill. 383; Martens v. People, 186 Ill. 318.

Right to Exercise Municipal Powers.

The right to exercise the municipal powers and privileges conferred by the legislature upon cities under the Cities and Villages Act (J. & A. ¶¶ 1271 et seq.) is a franchise of the highest character. People v. Spring Valley, 129 Ill. 180.

FRANK LAW.

(Law Fr. fraunche ley; Law Lat. libera lex, lex terrae). In old English law. The liberty of being sworn in courts, as a juror or witness; one of the ancient privileges of a freeman, or free and lawful man (liber et legalis homo). Otherwise called the law of the land (lex terrae), or simply law (lex). The nature of this privilege may be understood from Bracton's description of the consequences of losing it, among which the principal one was that the parties incurred perpetual infamy, so that they were never afterwards to be admitted to oath, because they were not deemed to be oathworthy (that is, not worthy of making oath), nor allowed to give testimony. Perpetuam infamiam incurrant, et legem terrae amittant, et ita quod nunquam postea ad sacramentum admittantur, quia de coetero non erunt othesworth, nec ad testimonium recipientur. Bracton, fol. 292b. was one of the punishments of jurors who had been convicted of perjury.

This term has been very generally defined "the privilege of the law's protection," and "the benefit of the free and common law of the land." Holthouse; Wharton. But that it had a more particular and determinate meaning is clear both from the testimony of the ancient writers, and from the peculiar signification of the word "law," which, from a very early period, denoted an oath, or the taking or making of an oath; as in the common expression "wager of law," and "making law." A lawful man (legalis homo) was one who was competent to be sworn as a juror or witness; and the word "lawful" is used in this sense in jury process to this day. 3 Bl. Comm. 340, 341, 352.

FRANK MARRIAGE.

A species of estate tail where the donee had married one of kin (as daughter or cousin) to the donor, and held the estate subject to the implied condition that the estate was to descend to the issue of such marriage. On birth of issue, as in other cases of estate tail before the statute De Donis, the birth of issue was regarded as a condition performed, and the estate thereupon became alienable by the donee. 1 Cruise, Dig. 71; 1 Washb. Real Prop. 67.

The estate is said to be in frank marriage because given in consideration of marriage, and free from services for three generations of descendants. Blount; Cowell. See, also, 2 Sharswood, Bl. Comm. 115; 1 Steph. Comm. 232.

FRATERNAL BENEFICIARY SOCIETY.

A "fraternal beneficiary society," within the meaning of the Insurance Act, is a corporation, society, or association formed, organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit. Act of 1893, § 1 (J. & A. ¶ 6646); Peterson v. Manhattan, etc., Co., 244 Ill. 336; Alexander v. Bankers' Union, 187 Ill. App. 475.

FRAUD.

Any cunning, deception or artifice used to circumvent, cheat, or deceive another. Farwell v. Metcalf, 61 Ill. 375.

Fraud has been termed a grosser species of deceit. Farwell v. Metcalf, 61 Ill. 374.

Fraud in Law.

To constitute fraud in law, or presumptive fraud, three elements must appear:
(1) there must be a voluntary gift; (2) there must be a then existing or presumptive indebtedness against the donor;
(3) it must appear that the donor did not retain sufficient property to pay the indebtedness. State Bank v. Barnett, 250 Ill. 318.

In order to prove fraud in law, or presumptive fraud, it is not enough to show that at the time of the gift the donor was indebted, but it must appear that the gift makes him insolvent. State Bank v. Barnett, 250 Ill. 318; Dimond v. Rogers, 203 Ill. 468; Merrell v. Johnson, 96 Ill. 230; Moritz v. Hoffman, 35 Ill. 556.

In Equity.

Fraud, in the sense of a court of equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed and are injurious to another, by which an undue and unconscientious advantage is taken of another. Diversey v. Johnson, 93 Ill. 560; Billboard, etc., Co. v. McCarahan, 151 Ill. 235.

Essentials.

Not every false affirmation will amount to fraud, but defendant must use some means to deceive or circumvent. Walker v. Hough, 59 Ill. 378; Sims v. Klein, 1 Ill. 303.

Scienter is a necessary element of fraud. Forsyth v. Vehmeyer, 176 Ill. 365; Merwin v. Arbuckle, 81 Ill. 503; Hiner v. Richter, 51 Ill. 302.

The elements of an action for fraud and deceit are representation, falsity, scienter, deception and injury. Foster v. Oberreich, 230 Ill. 527.

To constitute fraud there must be a wilful, false representation of facts, or the suppression of such facts as honesty and good faith require to be disclosed. Mitchell v. Deeds, 49 III. 422.

In order to constitute fraud, a representation must be an affirmance of a fact and not a mere promise or statement of intention. Miller v. Sutliff, 241 Ill. 526; Commercial, etc., Co. v. Bates, 176 Ill. 202; Day v. Fort Scott, etc., Co., 153 Ill. 300; People v. Healy, 128 Ill. 16; Gage v. Lewis, 68 Ill. 615. The representation must usually be of a past or presently existing fact (Kitson v. Farwell, 132 Ill. 337; People v. Healy, 128 Ill. 18; Gage v. Lewis, 68 Ill. 615), which is material (Merwin v. Arbuckle, 81 Ill. 502) and which defendant knows or has good reason to know is false (People v. Healy, 128 Ill. 16; Merwin v. Arbuckle, 81 Ill. 502; Walker v. Hough, 59 Ill. 378; Wheeler v. Randall, 48 Ill. 183; Sims v. Klein, 1 Ill. 303) and the party accepting the representation must have relied upon it and been induced to act by it. Merwin v. Arbuckle, 81 Ill. 502. While the representation of a matter in the future may constitute fraud, it must be an assertion of a fact and not of an intention to do something in the future. Miller v. Sutliff, 241 Ill. 526.

Purchase While Insolvent.

One who buys when insolvent is not guilty of fraud, although he knows his condition and fails to disclose it, or has no reasonable expectation that he will ever be able to pay (Kitson v. Farwell, 132 Ill. 337; (People v. Healy, 128 Ill. 17; Blow v. Gage, 44 Ill. 217), but it will be otherwise if the purchase is made with intention to make an assignment. Blow v. Gage, 44 Ill. 217.

Representations of Value.

Generally representations as to mere value, although known to be false, do not constitute fraud. Merwin v. Arbuckle, 81 Ill. 502; Banta v. Palmer, 47 Ill. 101; Sims v. Klein, 1 Ill. 303.

In Judgment or Decree.

Fraud is of two kinds with reference to judicial proceedings—fraud in obtaining

the adjudication by false evidence, and fraud which gives the court colorable jurisdiction over the defendant's person. Pratt v. Griffin, 223 Ill. 351.

Bankruptcy Act.

The term "fraud," used in section 17 of the Bankruptcy Act of 1898, relating to discharges in bankruptcy, means positive fraud, involving moral turpitude or intentional wrong, and does not include constructive fraud. Crawford v. Burke, 201 iii. 590.

In Execution of Instrument.

Fraud in the execution of an instrument is practiced where the instrument is misread to the party signing it, or where there is a surreptitious substitution of one paper for another, or where, by some other trick or device, a party is made to sign an instrument which he did not intend to execute, or where the party signing the instrument is induced to execute it by misrepresentation or fraudulent representations as to collateral matters, or as to the nature and value of the consideration. Papke v. G. H. Hammond Co., 192 Ill. 635.

Promise of Future Performance.

A promise to perform something in the future does not amount to fraud, although coupled with a present intention not to perform the promise. Miller v. Sutliff, 241 Ill. 526; Commercial, etc., Co. v. Bates, 176 Ill. 202; Day v. Fort Scott, etc., Co., 153 Ill. 300; Kitson v. Farwell, 132 Ill. 337.

Mere Breach of Contract.

A mere breach of a contract does amount to fraud, although coupled with a knowledge of inability to perform, or a present intention not to perform. Miller v. Sutliff, 241 Ill. 527.

FRAUD AND CIRCUMVENTION.

The "fraud and circumvention" which section 10 of the Negotiable Instruments Act provides may be pleaded in bar of any action on the instrument obtained thereby, must relate to the obtension of

the instrument itself, and is such a trick or device as induces the giving of one character of instrument under the belief that it is another of a different character, such as giving a note or agreement for one sum or thing, when it is for another sum or thing, or giving a note under the belief that it is a receipt, and the quoted expression not relate to the consideration on which the instrument is based, or to the quality, quantity, value or character of such consideration. Latham v. Smith, 45 Ill. 27 (citing Adams v. Woolridge, 4 Ill. 256; Mulford v. Shepard, 2 Ill. 583; Woods v. Hynes, 2 Ill. 104).

The "fraud and circumvention" which section 10 of the Negotiable Instruments Act provides may be pleaded in bar of action on the instrument obtained thereby, which statute only embodies a rule of the common law, must be a trick or device by which one kind of an instrument is signed in the belief that it is of another kind, or the amount or nature or terms of the instrument must be misrepresented to the signer. Lyman v. Kline, 128 Ill. App. 502. To the same effect see Latham v. Smith, 45 Ill. 27.

The expression "fraud and circumvention," used in section 10 of the Negotiable Instruments Act (J. & A. ¶ 7631), uses the term "circumvention" as being nearly, if not quite, synonymous with "fraud." Latham v. Smith, 45 Ill. 27.

FRAUDULENT CONVEYANCE.

A conveyance, the object, tendency, or effect of which is to defraud another, or the intent of which is to avoid some duty or debt due by or incumbent on the party making it. 2 Kent, Comm. 440; 4 Kent, Comm. 462.

Statute of Fraudulent Conveyances.

Fraudulent conveyances received early attention; and the statutes of 13 Eliz. c. 5, and 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18, declared all conveyances made with intent to defraud creditors, etc., to be void. This statute, on which all subsequent legislation has been patterned, defined a fraudulent conveyance as "a conveyance, the object, tendency, or

effect of which is to avoid some duty or debt due by or incumbent upon the party making the conveyance." By a liberal construction, it has become the settled English law that a voluntary conveyance shall be deemed fraudulent against a subsequent purchaser, even with notice. 9 East, 59; 2 Sharswood, Bl. Comm. 296; Roberts, Fraud. Conv. 2, 3.

FRAUDULENTLY.

Implies Deliberate Purpose to Deceive.

Both the law and common usage imply from the use of the word "fraudulently" a deliberately planned purpose and intent to deceive and thereby to gain an unlawful advantage. Lasher v. Carey, 182 Ill. App. 154.

Implies Malice.

A statement of claim alleging that defendant "fraudulently" and tortiously converted, etc., sufficiently alleges an evil intent, design or purpose, or in other words, malice. Lasher v. Carey, 182 Ill. App. 153.

FRAUDULENTLY AND DECEITFULLY.

In an action for deceit, an allegation that defendant "fraudulently and deceitfully" did the acts complained of is a sufficient averment of scienter, although it is nowhere alleged that defendant knew that his representations were false. Farwell v. Metcalf, 61 Ill. 375.

FRAUDULENTLY CONCEALS.

The expression "fraudulently conceals," used in section 22 of the Limitations Act (J. & A. ¶ 7217), extending the time for bringing actions in certain cases, may have reference to fraud connected with or constituting the cause of action, or in subsequent acts, designed to conceal a cause of action originating without fraud. Bartalott v. International Bank, 14 Ill. App. 168 (quoting Campbell v. Vining, 23 Ill. 482, where the quoted language was used with reference to the fraudulent concealment of a cause of ac-

tion which might prior to the statute be replied to a plea of the Statute of Limitations).

The expression "fraudulently conceals," used in section 22 of the Limitations Act (J. & A. ¶ 7217), extending the time for bringing an action in certain cases, refers to something of an affirmative character, designed to prevent and preventing the discovery of the cause of action, and not to mere silence concerning it by the person liable. Lancaster v. Springer, 239 Ill. 482; Fortune v. English, 226 Ill. 267; Parmelee v. Price, 208 Ill. 561; Wood v. Williams, 142 Ill. 280; Conner v. Goodman, 104 Ill. 368; Fortune v. English, 128 Ill. App. 543; Cunningham v. Dougherty, 121 Ill. App. 399.

FRAUDULENTLY OBTAINED.

An information charging that defendant "fraudulently obtained" certain money from a bank by false representations is equivalent to a direct charge that the bank was defrauded by means of such representations. People v. Holtzman, 195 Ill. App. 55.

FREE.

Not under restraint; at liberty; not obstructed; as, the water has a free passage or channel. Summers v. People, 29 Ill. App. 172.

FREE AND CLEAR OF ALL INCUMBRANCES.

A covenant to convey land "free and clear of all incumbrances" means, by the quoted expression, free and clear of settled, fixed incumbrances, and does not include a possibility of dower. Bostwick v. Williams, 36 Ill. 69.

FREE AND EQUAL.

Elections are "free and equal," within the meaning of section 18 of article 2 of the Constitution of 1870, when the voters are subjected to no intimidation or improper influence, and where every voter is allowed to cast his ballot as his own judgment and conscience dictate, and where each vote is equal in its influence on the result to the vote of every other elector,—when each ballot is as effective as every other ballot. People v. Czarnecki, 256 Ill. 327; People v. Hoffman, 116 Ill. 599.

FREE AT.

The expression, "free at Ridgeville," Indiana, U. S. duty unpaid, in a contract for the sale of goods, means that the seller was to pay the cost of packing and transportation to Ridgeville, Indiana, and that the expense of customs duty on the goods was to be borne by the purchaser, without deduction from or credit on the purchase price of the goods quoted. Steidtmann v. Joseph Lay Co., 234 Ill. 88.

FREE COURSE.

Having the wind from a favorable quarter. To prevent collision of vessels, it is the duty of the vessel having the wind free to give way to a vessel beating up to windward and tacking. 3 Hagg. Adm. 215. At sea, such vessel meeting another close hauled must give way, if necessary to prevent the danger of collision. 3 Car. & P. 528. See 9 Car. & P. 528; 2 W. Rob. Adm. 225; 2 Dods. Adm. 87.

FREE FISHERY.

An exclusive right of fishing in some parts of the sea bordering on the realm, or in river where there is tide, existing only by grant from the king. Dickey, J., dissenting opinion Parker v. People, 111 Ill. 615.

A franchise which gives an exclusive right of fishing in a public navigable river, without any ownership on the soil. 3 Kent, Comm. 329; 2 Sharswood, Bl. Comm. 39; 1 Salk. 637; Woolr. Waters, 97. Free fishery is the same as common of fishery. Co. Litt. Hargrave's notes, 122; 2 Sharswood, Bl. Comm. 39; 7 Pick. (Mass.) 79; Angell, Watercourses, c. 6, §§ 3, 4.

FREE FROM NEGLIGENCE.

An instruction that plaintiff should recover if, inter alia, he was "free from negligence" is not erroneous as making the requirement of law as to ordinary care satisfied with mere passiveness on the part of plaintiff, for, since negligence is the failure to observe ordinary care, the quoted phrase means to use one's faculties (to do something) and is not satisfied with mere passivity. Baltimore & O. S. W. Ry. Co. v. Wheeler, 63 Ill. App. 195.

FREE ON BOARD.

See also F. O. B.

The natural meaning of the expression "free on board," as used in a contract for the shipment of goods, is that the goods are to be furnished by the seller on board free of all charges and expenses up to and including the loading. Harman v. Washington, etc., Co., 228 Ill. 304.

Delivery "free on board cars" means delivery on cars at place named free to be taken by the purchaser without any obstruction, burden or impediment. Chandler L. Co. v. Radke, 136 Wis. 495, 498; 118 N. W. 185.

"If the goods dealt with by the contract [of sale of goods] were specific goods, it is not denied but that the words 'free on board,' according to the general understanding of merchants, would mean more than merely that the shipper was to put them on board at his expense; they would mean that he was to put them on board at his expense on account of the person for whom they were shipped; and in that case the goods so put on board under such a contract would be at the risk of the buyer whether they were lost or not on the voyage. * * * The question arises, can there be a contract with the terms 'free on board' which can be fulfilled without the delivery of specific goods at the time of shipment? Is there any mercantile or legal reason why a person should not agree to sell so much out of a bulk cargo on board or ex such a ship upon the terms that if the cargo be lost the loss shall fall upon the purchaser, and not upon the seller? I can see no reason why he should not; and if such a contract can be made, and in a contract to buy and sell a certain quantity ex ship or ex bulk there is put in the terms 'free on board,' one must, with regard to that contract, give some meaning to those words 'free on board.' What meaning can be given to them with regard to the unseparated part of the goods which is the subject-matter of the contract, but the same meaning as is given to those words with regard to goods attributed to the contract? What is there unreasonable or contrary to business or law in those words 'free on board,' meaning in such a contract 'I sell you twenty tons out of fifty upon the terms that you shall pay such a price for those twenty, I paying the costs of the shipment, that is, "free on board," and you bearing the risk of whether they are lost or not?' It does not seem to me that there is anything more inconsistent with business or law that parties should make such a contract with regard to a portion of a cargo than that they should make it with regard to a whole cargo or with regard to a specific part of a cargo." Brett, M. R., in Stock v. Inglis, 12 Q. B. D. 573.

FREE SCHOOLS.

The expression "free schools," used in section 1 of article 8 of the Constitution of 1870, includes a high school for the more advanced pupils of a township. Richards v. Raymond, 92 Ill. 617.

FREE SERVICES.

Such as it was not unbecoming the character of a soldier or freeman to perform; as, to serve under his lord in the wars, to pay a sum of money, and the like. 2 Bl. Comm. 62; 1 Washb. Real Prop. 25.

FREE SHIPS.

Neutral ships. "Free ships make free goods" is a phrase often used in treaties to denote that the goods on board neutral ships shall be free from confiscation, even

though belonging to an enemy. Wheat. Int. Law, 507 et seq.; 1 Kent, Comm. 126. See 3 Phillim. Int. Law (3d Ed.) 238 et seq., for a full discussion of the subject.

PREEDOM.

"Freedom is the power by which man can do what does not interfere with the rights of another; its basis is nature; its standard is justice; its protection is law; its moral boundary is the maxim, 'Do not unto others that you do not wish they should do unto you.'" French Const. of 1793.

FREEHOLD.

See also Involving a Freehold.

An estate in real property of inheritance, or for life, or the term by which it is held. Nevitt v. Woodburn, 175 Ill. 383; Ducker v. Wear, etc., Co., 145 Ill. 657; Gage v. Scales, 100 Ill. 221.

"Here (Litt. s. 57) it appeareth that tenant in fee, tenant in taile, and tenant for life, are said to have a frank-tenement, a freehold, so called because it doth distinguish it from termes of yeares, chattels upon incertaine interests, lands in villenage, or customary or copyhold lands." Co. Litt. 43 b.

Blackstone's Definition.

Such an estate in lands as is conveyed by livery of seizin, and in tenements of an incorporeal nature, by what is equivalent thereto. Chaplin v. Commissioners of Highways, 126 Ill. 271; Oswald v. Wolf, 25 Ill. App. 502.

"Such an estate, and no other, as requires actual possession of the land is, legally speaking, freehold"; but "an estate of freehold, may, according to our modern ideas, be in possession, remainder or reversion." 2 Com. 104.

Elements.

An estate, to be a freehold, must possess two qualities, (1) immobility—that is, the property must be either land or some interest issuing out of or annexed to the land, and (2) a sufficient legal indeterminate duration. Chaplin v. Commissioners of Highways, 126 Ill. 271.

Nature of Estate.

A legal interest in land is to be deemed a freehold, not because of the kind or quantity of the interest, but because of its sufficient, legal, indefinite duration. Harlem v. Suburban R. Co., 198 Ill. 339; Chaplin v. Commissioners of Highways, 126 Ill. 273 (overr. Lucan v. Cadwallader, 114 Ill. 286; Eckhart v. Irons, 114 Ill. 470).

Illustrations.

The term "freehold" includes easements for life or in fee, (Harlem v. Suburban R. Co., 198 Ill. 339; Chaplin v. Commissioners of Highways, 126 Ill. 273 [overr. Lucan v. Cadwallader, 114 Ill. 286; Eckhart v. Irons, 114 Ill. 470]) estates of dower, as distinguished from mere rights of dower, not consummate, (McNeer v. McNeer, 142 Ill. 399; Goodkind v. Bartlett, 136 Ill. 19) homestead estates, (Gillespie v. Fulton, etc., Co., 236 Ill. 204) all estates of inheritance in real property, whether corporeal or incorporeal, (Oswald v. Wolf, 126 Ill. 549] [aff'g 25 Ill. App. 502]; Gage v. Scales, 100 Ill. 222) a right to a natural watercourse flowing through one's land, which is part of the freehold, (Kewanee v. Otley, 204 Ill. 417) and rights to go on land and remove all the oil, if such right be of unlimited duration. Ohio, etc., Co. v. Daughetee, 240 Ill. 367; Watford v. Shipman, 233 Ill. 13; Bruner v. Hicks, 230 III. 540.

An easement may be a freehold or a chattel one, according to its duration. Chaplin v. Commissioners of Highways, 126 Ill. 271.

A perpetual easement in land, (Chicago v. Green, 238 Ill. 277; People v. Magruder, 237 Ill. 345; Funston v. Hoffman, 232 Ill. 363; Harlem v. Suburban R. Co., 198 Ill. 339; Perry v. Bozarth, 198 Ill. 329; Wessels v. Colebank, 174 Ill. 624; Farrelly v. Kane, 172 Ill. 416; Crete v. Hewes, 168 Ill. 332; Waggeman v. North Peoria, 160 Ill. 278; Brushy Mound v. McClintock, 146 Ill. 644; Chronic v.

Pugh, 136 Ill. 544; Tinker v. Forbes, 136 Ill. 234; Chaplin v. Comrs. of Highways, 126 Ill. 273 (overr. Lucan v. Cadwallader, 114 Ill. 285; Eckhart v. Irons, 114 Ill. 469); Streator, etc., Co. v. Interstate, etc., Co., 142 Ill. App. 191), or any interest in the nature of such easement, when created by grant or by any proceeding which in law is equivalent to a grant, constitutes a freehold. Harlem v. Suburban R. Co., 198 Ill. 339; Perry v. Bozarth, 198 Ill. 329; Brushy Mound v. McClintock, 146 Ill. 644; Chaplin v. Commissioners of Highways, 126 Ill. 273; Streator, etc., Co. v. Interstate, etc., Co., 142 Ill. App. 191.

Practice Act.

The word "freehold," as used in the Constitution of 1870 and in section 118 of the Practice Act (J. & A. ¶8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, has the same meaning as known to and defined by the common law, and does not include the mere right to do that which, in equity, will entitle a party to a freehold. Kirchoff v. Union, etc., Co., 128 Ill. 204; Streator, etc., Co. v. Interstate, etc., Co., 142 Ill. App. 191.

Building Restrictions.

A right to have an adjoining lot kept free from buildings of every sort except one named is a freehold. Tinker v. Forbes, 136 Ill. 235.

FREEHOLDERS OF THE COUNTY.

Section 5 of the Dramshops Act (J. & A. ¶ 4604), requiring that the sureties on the bond of a licensee under the act be "freeholders of the county" in which the license is issued does not require that such freeholders reside in such county. Matthews v. People, 159 Ill. 405.

FREELY.

In acknowledgment of deed by wife means, without constraint, coercion, or fear of injury from the husband, under whose power and control she is legally supposed to be. Meriam v. Harsen, 2 Barb. Ch. (N. Y.) 269.

FREEMAN.

(1) One in the possession of the civil rights enjoyed by the people generally; (2) An allodial proprietor; one born or made free of certain municipal immunities or privileges. McCafferty v. Guyer, 59 Penn. St. 116.

FREIGHT.

Freight, in the common acceptation of the term, means the price for the actual transportation of goods by sea from one place to another; but, in its more extensive sense, it is applied to all rewards or compensation paid for the use of ships, including the transportation of passengers. Denoon v. Assurance Co. L. R. 7. C. P. 348.

The term "freight" has several different meanings; as the price to be paid for the carriage of goods; or for the hire of a vessel under a charter party or otherwise; and sometimes to designate goods carried. Lord v. Neptune Ins. Co., 10 Gray (Mass.) 112.

Freight is the profit earned by the shipowner in the carriage of goods on board his ship; and an insurance upon freight is an insurance made in order to secure that profit to the ship-owner, in case he is prevented by any of the perils insured against from actually earning such profit. Forbes v. Aspinall, 13 East 325; 4 Wash. (U. S. C. C.) 123; 1 Mason (U. S. C. C.) 12; 8 Bosw. (N. Y.) 563.

"Freight," as used in a policy of marine insurance, "imports the benefit derived from the employment of the ship." Per Ld. Tenterden, Flint v. Flemyng, 1 B. & Ad. 48.

"In my opinion nothing is freight unless there is involved in it a contract to carry; for freight is a sum payable in respect of a contract to carry, and if there is no contract to carry, then, although the sum to be paid may be called freight, it is not in point of law freight within the rule that the mortgagee is entitled to the accruing freight." Per Mellish, L. J., Keith v. Burrows, 2 C. P. D. 167; 46 L. J. C. P. 460; affd. by H. L. 2 App. Ca. 636; 46 L. J. C. P. 801.

"Freight, according to the dictionaries, includes (1) the cargo; (2) the actual transport from one place to another; (3) the hire of the ship, or part of it, or the charge for the transport of goods therein. It may by extension include the passengers, or even passage money, as, for instance, upon a question arising upon the now abandoned maxim that 'freight is the mother of wages,' or upon a question of sale or capture or abandonment, because the passage money is equally with the freight of goods an incident or accessory of the ship. Accordingly, Chancellor Kent (3 Com. 7 Ed. 296) states that, 'freight, in the common acceptation of the term, means the price for the actual transportation of goods by sea from one place to another; but in its more extensive sense it is applied to all rewards or compensation paid for the use of ships, including the transportation of passengers.' And he refers to Giles v. The Cynthia (1 Peters, Adm. 206), in which the question arose upon a claim to wages. And in Mullow v. Backer (5 East, 321) Lawrence, J., said, 'Foreign writers consider passage-money the same as freight;' and Lord Ellenborough added, 'except for the purpose of lien, it seems the same thing." Per Willes, J., Denoon v. Home and Col. Assrce., 41 L. J. C. P. 168; L. R. 7 C. P. 348. Vh. Sweeting v. Darthez, 23 L. J. C. P. 131; 14 C. B. 538; Williams v. North China Insrce., 1 C. P. D. 757.

There is no loss of "freight," if, having been earned, the charterers are entitled to, and do, withhold it as a mulct or forfeit. Inman Co. v. Bischoff, 52 L. J. Q. B. 169; 7 App. Ca. 670.

FREIGHT IN ADVANCE SUBJECT TO INSURANCE.

"This, in a charter-party, does not mean that the insurance is to be a condition precedent to the recovery of the freight; but merely that the insurance premium is to be deducted from the freight." 1 Maude & P. 365, citing Jackson v. Isaacson, 3 H. & N. 405; 27 L. J. Ex. 392: Vh. per Manisty, J., Rodoconachi v. Milburn, 17 Q. B. D. 322.

FREIGHT TRAIN.

A wrecking train used for transporting implements, machinery and materials is a "freight train" within the meaning of a village ordinance regulating the speed of such trains. Chicago, B. & Q. R. Co. v. Johnson, 53 Ill. App. 481.

FREQUENT.

To visit often; to resort to often or habitually. Webster, quoted in 109 Ind. 176.

To "frequent" a place is to frequently go there, or to be in the habit of going there, e. g., to frequent a public-house. Therefore a conviction cannot be sustained under the Vagrant Act (5 G. 4, c. 83, s. 4), for "frequenting" a street, etc., with intent to commit felony, where the evidence does not show that the person has been there more than once (R. v. Clark, 54 L. J. M. C. 66; 14 Q. B. D. 93; 52 L. T. 136; 33 W. R. 226; 49 J. P. 246; 1 Times Rep. 109). "He must in fact be seen hanging about the street." Per Grove, J., 1 Times Rep. 109.

FRESH FORCE.

Force done within forty days. Fitzh. Nat. Brev. 7; Old Nat. Brev. 4. The heir or reversioner in a case of disseisin by fresh force was allowed a remedy in chancery by bill before the mayor. Cowell.

FRESH PURSUIT.

An immediate pursuit of an escaping criminal. The phrase does not imply instant pursuit, but pursuit without unreasonable delay. See 27 Cal. 574; 70 Miss. 253.

FRESH TAXES.

A covenant in a lease to pay "all fresh taxes," would seem, primarily, to mean all new taxes. Watson v. Atkins, 3 B. & Ald. 647.

FRESH-WATER RIVER.

"A fresh-water river, like a tidal river, is composed of the alveus, or bed, and the

water; but it has banks instead of shores." Gould Waters, § 45.

FRIVOLOUS ANSWER.

One that shows no defence, conceding all that it alleges to be true. Brown v. Jenison, 3 Sandf. (N. Y.) 732.

FRIVOLOUS PLEA.

Pleading interposed for delay, and its frivolous character indicates bad faith in the pleading. Lerdall v. Charter Oak Ins. Co., 51 Wis. 430.

FROM.

Where the particular period sought is to begin or be computed "from" some recognized division of time, the date of beginning is to be excluded in making the computation unless a contrary intention appears. Cummins v. Holmes, 11 Ill. App. 161 (citing Protection, etc., Co. v. Palmer, 81 Ill. 93; Higgins v. Halligan, 46 Ill. 173; Bowman v. Wood, 41 Ill. 203; White v. Jones, 38 Ill. 159; Waterman v. Jones, 28 Ill. 54; Ewing v. Bailey, 5 Ill. 420). See also Peoria, etc., Co. v. Elder, 165 Ill. 62 (holding that the term "from," used in a promissory note with reference to a named date, means a subsequent day).

The word "from" simply expresses the general idea of separation. Some of its definitions given by Webster are: "Out of the neighborhood of"; "leaving behind"; "out of"; "the antithesis and correlative of to." Sefton v. Prentice, 103 Cal. (1894) 673.

When an act has to be done "from" or "within" two times, e. g., "from six to eight weeks,"—the time for doing it is some period fairly between those times. Per Brett, J., Ashworth v. Redford, 43 L. J. C. P. 58; nom. Ashforth v. Redford, L. R. 9 C. P. 22.

A bequest to a Class "from S. downwards," includes S. Lett v. Osborne, 51 L. J. Ch. 910.

"To, from and by are terms of exclusion, unless by necessary implication they are manifestly used in a different sense."

Wells v. Jackson Iron Mfg. Co., 48 N. H. 538.

"It may be assumed, as argued for the plaintiff, that the preposition 'until,' like 'from' or 'between,' generally excludes the day to which it relates. * * * But such general rules of construction must yield to the intention of the parties." Kendall v. Kingsley, 120 Mass. 95.

The day mentioned in a demise as the beginning of the tenancy is the first day of the term, whether the expression used be "on" the day specified or "from" that day. Sidebotham v. Holland (1895), 1 Q. B. 378.

FROM ALL THE OTHER CIR-CUMSTANCES.

An instruction that the jury have the right to determine the credibility of witnesses, inter alia, "from all the other circumstances" appearing in the case, instead of from "all the evidence in the case" is erroneous, the two expressions not being equivalents. Ryan v. People, 122 Ill. App. 464.

FROM AND AFTER.

A will devising property to an executor for twenty-five years "from and after the probate of this will" is void as creating a perpetuity, the expression quoted fixing a time for the vesting of the devise which cannot be said to be certain to happen within twenty-one years from the death of the testator. Johnson v. Preston, 226 Ill. 457.

The expression "from and after the death" is "generally regarded as being equivalent merely to," "remainder." 1 Jarm. 816, commenting on Andrew v. Andrew, 45 L. J. Ch. 232; 1 Ch. D. 410: Vf. Jull v. Jacobs, 3 Ch. D. 703, 713: Ferguson v. Ferguson, 17 L. R. Ir. 560: Re Jobson, 34 S. J. 155: 1 Jarm. 806.

Words and phrases denoting time, such as "when," "then," and "from and after," in a devise of a remainder, limited upon a particular estate determinable on an inevitable event, relate merely to the time of the enjoyment of the estate, and not to the time of its vesting. This is

In Nelespecially so as to real estate. son v. Russell, 135 N. Y. 137, it was held that the words "from and after" in a testamentary gift of a remainder, following a life estate, were insufficient to justify the conclusion that the remainder was contingent and not vested. Hersee v. Simpson, 154 N. Y. 150.

"The expression 'from and after' the death of a person to whom a life interest is given does not, I think, mean from that time and from no other: it only means 'subject to the interest of the tenant for life." North, J., alone, in In re Jobson, 44 Ch. D. 157.

FROM AND AGAINST THE WILL AND PROTEST.

In an action of trover to recover the value of a horse lost on a wager on a horse race, where it appeared that plaintiff did not yield the horse voluntarily to defendant, an instruction that plaintiff should recover if defendant took the horse "from and against the will and protest" of plaintiff, the quoted expression being added by the court to the instruction as requested, is erroneous, since section 2 of the act of 1845 relating to gaming, now section 132 of division 1 of the Criminal Code (J. & A. ¶ 3735), under which the action was brought, makes no distinction between cases where the money or property is paid or delivered by the loser with or without protest, and the courts are therefore not warranted in making such a distinction. Richardson v. Kelly, 85 Ill. 494.

FROM AND TO.

These words do not have a precise fixed meaning, but may mean from within and into. Hazlehurst v. Freeman, 52 Georgia 246.

FROM AND TO A PLACE.

The words from and to a place, in the charter of a railroad corporation, mean from and to a point within the place from and to which the corporation was authorwhere there is in the act anything indicating that intention. McCartney et al. v. C. & E. R. R. Co. et al., 112 Ill. 626. Citing Moses v. Pittsburg, Ft. W. & C. R. Co., 21 Ill. 516.

FROM ANY GAS OR VAPOR.

Death by reason of accidental asphyxiation by illuminating gas is not death resulting wholly or partly "from any gas or vapor." within the meaning of a policy of accident insurance. Travelers', etc., Co. v. Ayers, 217 Ill. 391.

FROM DATE.

In the absence of anything tending to show a contrary intention, the words "from date," exclude the day of date. Walker v. Hancock Mutual Life Ins. Co., 167 Mass. 188, citing Bigelow v. Wilson, 1 Pick. 485; Buttrick v. Holden, 8 Cush. 233; Seekonk v. Reheboth, 8 Cush. 371; Fuller v. Russell, 6 Gray, 128; Bemis v. Leonard, 118 Mass. 502; Kendall v. Kingsley, 120 Mass. 94; Seward v. Hayden, 150 Mass. 158; Isaacs v. Royal Ins. Co., L. R. 5 Ex. 296.

FROM DEMAND.

"It is suggested that to send in a bill is not to demand payment of it, but this is a fanciful view. The words 'from demand' [in a general order (No. VII) providing that a solicitor may charge interest on his disbursements and costs from the expiration of one month from demand from the client], mean 'from sending in the bill." Lord Esher, M. R. in Blair v. Cordner, 19 Q. B. D. 518.

FROM HENCEFORTH.

A lease to begin "from henceforth" or "from the making hereof," "shall begin in the day on which it is delivered, for the words of the indenture are not of any effect till the deliverie, and thereby from the making, or from henceforth, take their first effect." Co. Litt. 46 b. Vf. Llewelyn v. Williams, Cro. Jac. 258; ized to construct its road, especially | Pope v. Skinner, Hob. 72: Clayton's case,

5 Rep. 1 a: Cornish v. Cawsy, Aleyn, 75; 2 Platt. 55.

An enactment "from henceforth, de cætero, does not necessarily imply a new law; as may be seen upon the doubts arising on the Stat. Merton, c. 2." Dwar. 685.

FROM HIS WORK.

A man is not on his way "from his work," within the meaning of the rules of a friendly society, who after leaving his work goes to a public-house and there stays for four hours, and, getting drunk there, meets with an accident on his way home. Joyce v. Northumberland Miners' Society, 4 Times Rep. 525.

FROM NECESSITY.

The causes which will warrant a court in discharging a jury in a criminal case without a verdict "from necessity" must fall under one of three heads, (1) where the court is compelled by law to be adjourned before the jury can agree upon a verdict; (2) where the prisoner by his own misconduct places it out of the power of the jury to investigate his case correctly, thereby obtaining an unfair advantage of the State, or is himself, by the visitation of providence, prevented from being able to attend to his trial; and (3) where there is no possibility for the jury to agree upon and return a verdict. Dreyer v. People, 188 Ill. 47.

FROM THE BODY OF THE COUNTY.

It was not necessary that jurors should have been summoned from every township in the county, in order to comply with the statute requiring jurors to be summoned from the "body of the county." This language means, "from the county at large," "from the people of the county at large," competent to act as jurors. State v. Arthur, 39 Ia. 633; State v. Bolln (1902), 10 Wyo. 476.

FROM THE CENTER LINE.

A deed bounding the granted parcel "from the center line" of a named railroad refers, by the quoted expression, to the center of the railroad track, and indicates the track as a monument which aids in determining a certain boundary. Peoria & P. U. R. Co. v. Tamplin, 156 Ill. 294.

FROM THE DATE OF THE NOTICE.

Where the laws of a beneficiary society require that assessments shall be paid within a certain number of days "from the date of the notice" thereof, the date will be considered to mean the date it is delivered or received, and not the date written in the notice or the date it is mailed. Illinois, etc., Aid v. Besterfield, 37 Ill. App. 525. To the same effect see Protection, etc., Co. v. Palmer, 81 Ill. 95 (where the expression was "from the date of this notice").

FROM THE DAY OF THE DATE.

A term limited to commence "from the day of the date," or "from the date" of the instrument, or from a certain day, will be taken to include or exclude that day, according to the context and subjectmatter. Williams v. Nash, 28 L. J. Ch. 886; 28 Bea. 93: Ammerman v. Digges, 12 Ir. C. L. Rep. App. i.: Elph. 124; 2 Platt, 54-57; Woodf. 150; and cases there cited: Vh. Co. Litt. 46 a.

"The general understanding is, that terms for years last during the whole anniversary of the day from which they are granted. Indeed, if this were otherwise, the last day, on which rent is almost uniformly made payable, would be posterior to the lease." Per Denman, C. J., Ackland v. Lutley, 9 A. & E. 879; 8 L. J. Q. B. 164; 1 P. & D. 636.

FROM THE DECK.

"Where a cargo was sold 'from the deck,' it was held to mean that the seller should pay all that was necessary in order to enable the buyer to remove the cargo from the deck." Benj. 638, citing Playford v. Mercer, 22 L. T. 41.

FROM THE EVIDENCE.

The expression "from the evidence," as used in instructions, means from a preponderance of the evidence. Donk Bros., etc., Co. v. Thil, 228 Ill. 243; Ducharme v. St. Peter, 135 Ill. App. 532; Chicago & E. I. R. Co. v. Pittman, 135 Ill. App. 488; Illinois C. R. Co. v. Warriner, 132 Ill. App. 309; Hall v. Ditto, 128 Ill. App. 189; Hueni v. Freehill, 125 Ill. App. 348; Adams v. Pease, 113 Ill. App. 360.

FROM THE PERSON OF ANOTHER.

The expression "from the person of another," used in section 246 of division 1 of the Criminal Code (J. & A. ¶ 3924), defining "robbery," is used in the same sense as the same expression had acquired at common law when the statute was enacted, and is not to be understood to mean that the goods taken are actually on the person, in a strict sense, it being sufficient if the property is taken feloniously, with force and violence, or by putting in fear, and in the presence of the owner. O'Donnell v. People, 224 Ill. 226.

FROM TIME TO TIME.

"The words 'from time to time' are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and therefore not being able to act again in the The meaning of the same direction." words "from time to time" is, that after once acting, the donee of the power may act again; -- and either independently of, or by adding to, or taking from or reversing altogether his previous act. Per Ld. Penzance, Lawrie v. Lees, 51 L. J. Ch. 214; 7 App. Ca. 19. Re Sutton Coldfield Grammar School, 51 L. J. P. C. 8; 7 App. Ca. 91.

It seems to be considered that the words "from time to time," or "and so toties quoties," added to a covenant for renewal of a lease, creates the right to a perpetual renewal. 1 Platt, 712, citing

Furnival v. Crew, 3 Atk. 83; 9 Mod. 446: Iggulden v. May, 7 East, 242: Maxwell v. Ward, 11 Price, 3; 13 Ib. 674; McClel. 458: Atkinson v. Pilsworth, 1 Vern. & Scriv. 156; Baynham v. Guy's Hospital, 3 Ves. 295.

Expenses payable "from time to time," s. 81, Ry. C. C. Act. 1845; V. Whitehouse v. Wolverhampton Ry., L. R. 5 Ex. 6; 39 L. J. Ex. 1.

FRONT OF.

By a local Act power was given of rating to the extent of 1s. per yard "of the length in front of" buildings. county prison with its garden and grounds abutted at its entrance, at its back, and at both its sides on to public ways: held, that "the words 'in front of' mean that part of the gaol which would be frontage if there were doors and windows in it, and therefore that that part of the gaol which abuts on public ways in the front, back and sides of the gaol is to be considered liable to be rated." Per Pollock, C. B., Bedfordshire Jus. v. Bedford Improvement Commrs., 21 L. J. M. C. 227; 7 Ex. 658. Vf. Governors of Bedford Infirmary v. Bedford Improvement Commrs.. 21 L. J. M. C. 229; 7 Ex. 768.

FRONTAGER.

One who owns the opposite side. Jacob. Law Dict. One who owns fronting, as land abutting upon a street or highway. Evans v. Newport Urban Sanitary Authority, 24 Q. B. D. 264.

FRONTING.

Premises "fronting, adjoining or abutting" on a street, and as such chargeable with expense of road-making under s. 150, P. H. Act, 1875, need not be absolutely contiguous (Wakefield v. Lee, 1 Ex. D. 336: Newport v. Graham, 9 Q. B. D. 183); but must have direct access thereto. Williams v. Wandsworth, 53 L. J. M. C. 187; 13 Q. B. D. 211: Lightbound v. Higher Bebington, 54 L. J. M. C. 130; 55 L. J. M. C. 94; 14 Q. B. D. 849; 16 Q. B. D. 577.

A building located upon a corner of a block with an entrance upon one street only should properly be considered as fronting upon both streets, within a building ordinance. Hollatz v. Gerberding, 204 Ill. App. 419.

FRUIT.

"The term 'fruit,' in legal acceptation, is not confined to the produce of those trees which in popular language are called fruit trees; but applies also to the produce of oak, elm, and walnut trees. In the old books the lessee is stated to have an interest in the trees in respect of the shade for cattle, and the fruit thereof" (per Bayley, J., Bullen v. Denning, 5 B. & C. 847). In Liford's Case (11 Rep. 48 a), it is laid down that the lessee shall have the young of all birds that breed in the trees and the fruits. Va. Berry v. Heard, Cro. Car. 242; Com. Dig. tit. Biens, H.

Frustra agi-qui judicium prosequi nequit cum effectu. He sues to no purpose, who cannot prosecute his judgment with effect, (who cannot have the fruits of his judgment). Fleta, lib. 6, c. 37, § 9.

FUAGE, OR FOCAGE.

Hearth money; a tax laid upon each fireplace or hearth. 1 Bl. Comm. 324; Spelman. An imposition of a shilling for every hearth, levied by Edward III (the Black Prince), in the dukedom of Aquitaine.

FUGITIVE CRIMINAL.

The Extradition Act, 1870 (33 & 34 V. c. 52, s. 26) defines a "fugitive criminal" as "any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state, who is in or who is suspected of being in some part of her Majesty's dominions." The words italicised show that the idea of flight from justice is not necessarily involved; and accordingly, for the purposes of the statute, the phrase "fugitive criminal" includes a person who being in Eng-

land (and not in any sense fleeing) commits an offence abroad,—e. g., a false pretence by means of sending a letter. R. v. Nillins, 53 L. J. M. C. 157.

FULL.

Complete, entire, without abatement,—mature, perfect. Quinn v. Donovan, 85 Ill. 195.

FULL AGE.

The age of twenty-one, by common law, of both males and females, and of twenty-five by the civil law. Litt. § 259; 1 Sharswood, Bl. Comm. 463; Vicat. Full age is completed on the day preceding the anniversary of birth. Salk. 44, 625; 1 Ld. Raym. 480; 2 Ld. Raym. 1096; 2 Kent, Comm. 263; 3 Har. (Del.) 557; 4 Dana (Ky.) 597.

FULL AND COMPLETE CARGO.

"A full and complete cargo * * * I take to mean as much as the ship would hold and safely carry." Holroyd, J., Hunter v. Fry (1819), 2 B. & Ald. 426.

FULL AND COMPLETE POS-SESSION.

Where a lease demised land with a house, cistern and orchard, a covenant that at the end of the term lessee would deliver up "full and complete possession" of the land is a covenant to deliver up full and complete possession of the land, including the house, cistern and orchard, as they were at the time the lease was executed, natural decay and inevitable accident excepted. Streeter v. Streeter, 43 Ill. 161.

FULL BLOOD.

A term of relation, denoting descent from the same couple. Brothers and sisters of full blood are those who are born of the same father and mother, or, as Justinian calls them, "ex utroque parente conjuncti." Nov. 118, cc. 2, 3; Mackeld. Civ. Law, § 145. The more usual term in modern law is "whole blood."

FULL COSTS.

"'Full costs' means 'no more than ordinary costs between party and party." Per Lindley, L. J., in Avery v. Wood (1891), 3 Ch. 115, citing Irvine v. Reddish, 5 B. & Al. 796; Jamieson v. Trevelyan, 10 Ex. 748.

FULL FAITH AND CREDIT.

Section 1 of article 4 of the Constitution of the United States, requiring that "full faith and credit" be given in each state to the public acts, records and judicial proceedings of every other state, does not require a state to enforce the penal laws or local police regulations of another state. Schuler v. Schuler, 209 III. 526.

FULL POWER AND AUTHORITY TO CONVEY.

A will giving executors "full power and authority to convey" testator's real estate for the purpose of carrying out the provisions of the will implies a power to sell such real estate. Hamilton v. Hamilton, 98 Ill. 258.

FULL PROOF.

Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt, constitutes full proof of the fact. Kane v. Hibernia Mut. Ins. Co., 9 Vroom (N. J.) 450.

FULL SALARIES.

A bequest to employees of "full salaries" for a stated period, means that the salaries are to be calculated free from incidental deductions either by custom of trade or illness, or anything of that sort, but does not exempt the legatee from legacy duty. Per North, J., Re Marcus, 56 L. J. Ch. 830; 57 L. T. 899; W. N. (87) 168.

FULLY EQUIPPED AS PER CATALOGUE.

A contract for automobiles providing

"fully equipped as per catalogue" is breached by the delivery of the machines without an equipment of rims and tires shown by a cut in the catalogue, although the printed specifications in the catalogue contain no such requirement, the cuts being as much a part of the catalogue as the specifications. Hemwall, etc., Co. v. Michigan, etc., Co., 195 Ill. App. 409.

FULLY PAID UP SHARES.

"Shares upon which the whole amount that could be called up had been called up. * * * in strictness that is the only meaning that could be applied to that phrase." Bloomenthal v. Ford (1897), A. C. 164.

FUNDS.

As employed in commercial transactions, the term "funds" usually signifies money. Galena, etc., Co. v. Kupfer, 28 III. 335.

The word "fund" ordinarily means money or negotiable papers readily convertible into cash. The Illinois Christian Missionary Society v. The American Christian Missionary Society, 277 Ill. 193.

The term "fund" was originally applied to a portion of the national revenue set apart or pledged to the payment of a particular debt. Ketchum v. City of Buffalo, 14 N. Y. 367.

A fund is merely a name for a collection or an appropriation of money. People v. N. Y. C. R. R. Co., 34 Barb. (N. Y.) 135.

"The funds," or "government funds" or "the public funds" (which expressions are synonymous, per Ld. Cranworth, Slingsby v. Grainger, 7 H. L. Ca. 280; 28 L. J. Ch. 617), generally means funded securities guaranteed by the English Government, i. e., Consols Reduced Annuities, Long Annuities, or any other of the English Funds (Howard v. Kay, 27 L. J. Ch. 448); but does not include foreign bonds guaranteed by England (Burnie v. Getting, 2 Coll. 324), nor bank stock (Slingsby v. Grainger, 8 D. G. M. & G. 385; 7 H. L. Ca. 273; 28 L. J. Ch. 616), that the machines delivered shall be | nor East India stock, under 3 & 4 W. 4, c. 85 (Brown v. Brown, 4 K. & J. 704), nor even unfunded exchequer bills (Johnson v. Digby, 8 L. J. O. S. Ch. 38); unless there is nothing more appropriate to answer the bequest. Mangin v. Mangin, 16 Bea. 300. V. Consols.

FUNDED DEBT.

That part of the national debt for which certain funds are appropriated towards the payment of the interest. Ketchum v. City of Buffalo, 14 N. Y. 367.

FUNDING.

The term "funding" has been sometimes applied in this country to the process of collecting together a variety of outstanding debts against corporations, the principal of which was payable at short periods, and borrowing money upon the bonds or stocks of the corporation to pay them off. Ketchum v. City of Buffalo, 14 N. Y. 367.

The word "funding" is used in the stat-"te [authorizing executors or administrators to mortgage the real property of estates for the purpose of "funding the indebtedness"], was evidently designed to mean the borrowing of a sufficient sum of money to discharge the claims against an estate, by creating another debt in lieu thereof. Lawrey v. Sterling, 41 Oreg. 530.

FUNDING BONDS.

Funding and refunding bonds are those issued to pay off prior indebtedness. If issued merely to pay floating indebtedness they are generally referred to as "funding" bonds, while if issued to take up other bonds they are usually called "refunding" bonds. 2 Fletcher Cyclopedia Corporations 1920.

FUNDS VOLUNTARILY CONTRIBUTED.

"It seems to me that the 'funds voluntarily contributed,' pointed at in the 6th Sub-section of § 11 [of the customs and inland revenue act, 1885 (48 & 49 Vict.

c. 51) which exempts from the duty imposed by the act property acquired by or with funds voluntarily contributed to any body corporate or unincorporate], are funds contributed by means of donations, legacies, gifts, and such like; and certainly do not embrace entrance fees and annual subscriptions to a club, which are payments of money for value received or to be received, and are not what I should call voluntary contributions at all." A. L. Smith, J., in In re Duty on Estate, etc., 18 Q. B. D. 734.

FUNERAL EXPENSES.

Fees for conducting a post mortem examination by physicians summoned by a subpoena of the coroner are not a proper part of the funeral expenses of the deceased and are not to be allowed against his estate as such. Smith v. McLaughlin, 77 Ill. 597.

"Funeral expenses have been held to include carriage hire to convey the family and friends to the place of interment (44 Miss. 124), suitable gravestones (30 Conn. 209), monuments (77 Pa. St. 49), burial plots (5 Redf. Sur. [N. Y.] 484), and vaults (14 Serg. & R. [Pa.] 64); also mourning apparel to enable the widow and children to attend decently at the funeral." 1 Ashm. (Pa.) 316.

FURLONG.

A measure of length, being forty poles, or one-eighth of a mile.

FURNISHED.

Where a building contract required the contractor to complete construction by a day named certain named materials being "furnished," and where another part of the contract provides for the payment to the contractor of a sum of money in consideration that he will "furnish all materials" and fully execute the work to the satisfaction of the architect, the subsequent conduct of contractees during construction showing that they recognized their obligation to furnish the materials expressly named shows that the

contract is to be construed as obliging the contractor to furnish all materials except those which contractees in terms agreed to furnish. Vermont Street, etc., Church v. Brose, 104 Ill. 212.

FURNISHED COMPLETE.

A contract providing that certain machinery shall be "furnished complete" includes, by the quoted expression, not only the cost of the machinery, but the labor and material necessary to place it in proper position for operation. Grove v. Miles, 58 Ill. 339.

FURNISHES THE SUPPLY.

A water company "furnishes the supply" of water within s. 62, P. H. Act, 1875, when its mains are laid in such a position as regards a house as will reasonably enable the owner to connect it with the mains. Southend Water W. Co. v. Howard, 53 L. J. Q. B. 354; 13 Q. B. D. 215.

FURNISHING.

"The furnishing of liquor is letting a minor have liquor, and is something more than giving. A narrow and technical definition of the word 'giving' might restrict its meaning to the handing of the liquor to him direct by the person giving * * * but it is not necessary it. that a person should hand the liquor to a minor in order to furnish it. the liquor, belonging to the person and under his control, is, by his consent or connivance, permitted to be taken and drank by the minor, whether it is passed to him direct or through the hands of another is immaterial; the liquor in either case is furnished to such minor, within the meaning of our statute," punishing any person who furnishes liquor to a minor. People v. Neumann, 85 Mich. (1891) 102.

FURNITURE.

Personal chattels in the use of a fam-

in a will, all personal chattels will pass which may contribute to the use or convenience of the householder, or the ornament of the house; as, plate, linen, china (both useful and ornamental), and pictures. Ambl. 610; 1 Johns. Ch. (N. Y.) 329, 388; 1 Sim. & S. 189; 3 Russ. 301; 2 Williams, Ex'rs, 752; 1 Rop. Leg. 203, 204; 3 Ves. 312, 313.

"It [the word "furniture"] is very general both in meaning and application, and its meaning changes so as to take the color of, or to be in accord with, the subject to which it is applied." The articles spoken of as furniture of different places, as of a house, a ship, or a store, "differ in kind according to the purposes which they are intended to subserve; yet, being put and employed in the several places as the equipment thereof for ornament, or to promote comfort or to facilitate the business therein done, and being kept or intended to be kept for those or some of those purposes, they pertain to such places, and constitute the furniture thereof." 63 Ala. 401.

A bequest of "furniture" may pass pic-Cremorne v. Antrobus, 5 Russ. tures. 312; 7 L. J. O. S. Ch. 88.

"It has been held that ballast is not part of the furniture of a merchant ship" (1 Maude & P. 53, n. [x], citing Molloy, B. 2, c. 1, s. 8: Kynter's Case, 1 Leon. 46). But provisions, for the use of the crew, are covered by a policy on the ship "and furniture." Brough v. Whitmore, 4 T. R. 206: Va. Hill v. Patten, 8 East, 373.

"'Furniture' [within the meaning of the rule that the doctrine of reputed ownership does not apply to the furniture of an hotel] must include everything which is necessary for the furnishing of an hotel for the purpose of carrying it on as an hotel." Brett, M. R. in ex parte Turquand, 14 Q. B. D. 646.

"The first question is whether St. 1884, c. 313, concerning conditional sales of 'furniture or other household effects,' applies to pianos. We have no doubt that it does." Lee v. Gorham, 165 Mass. 130.

"We are of the opinion that the words as used in this statute [exempting from ily. By the term "household furniture" | taxation 'household furniture not exceeding one thousand dollars in value'] mean all furniture appertaining to a dwelling house and bought and kept for use in the household." Day v. Lawrence, 167 Mass. 371.

"The term 'furniture' embraces everything about the house that has been usually employed therewith, including plate, linen, china and pictures." Endicott v. Endicott (1886), 41 N. J. Eq. 96.

FURS.

Hat bodies made partly of the soft parts of rabbit skins and partly of sheep's wool, are not "furs" within s. 1, Carriers' Act, 1830. Mayhew v. Nelson, 6 C. & P. 58.

FURTHER COMPENSATION.

Means additional to some compensation before mentioned. Hitchings v. Van Brunt, 38 N. Y. 338.

FURTHER ORDER.

A decree directing periodical payments in a certain way "until further order," is final as to the rights of the parties, and temporary only as to the sources and mode of payment. Peareth v. Marriott, 52 L. J. Ch. 221; 22 Ch. D. 182.

FUSE.

A piece of wire about six inches in length made of very soft material, which melts when it comes in contact with a high potential current of electricity. Chicago, etc., Co. v. Northwestern, etc., Co., 199 Ill. 360.

GAIN.

Business companies, of more than 20 persons, for "the acquisition of gain" must be registered (s. 4, Companies Act, 1862, 25 & 26 V. c. 89). "'Gain,' means exactly acquisition. Therefore the expression here is, 'the acquisition of acquisition.' Gain is something obtained or acquired. It is not limited to pecuniary gain. In fact, we should have to put the word 'pecuniary' to show it. It is not

'gains,' but 'gain,' in the singular. Commercial profits, no doubt, if acquired are gain; but I cannot find any word limiting it simply to a commercial profit. I take the word as referring to a company which is formed to acquire something, as distinguished from a company formed for spending something and in which the individual members are simply to give something away or to spend something. and not to gain anything" (per Jessel, M. R., Re Arthur Average Assn., 44 L. J. Ch. 572; 10 Ch. 546: Vf. Smith v. Anderson, 50 L. J. Ch. 39; 15 Ch. D. Crowther v. Thorley, 50 L. T. 247: Re Siddall, 54 L. J. Ch. 682). 43: diminution of a loss, is a "gain" within the meaning of the section. Re Padstow Assrce., 51 L. J. Ch. 344; 20 Ch. D. 137.

"Although in the Income Tax Act (5 & 6 V. c. 35, s. 100), 'profits' and 'gains' are really equivalent terms, yet the use of the word 'gains' in addition to the word 'profits' furnishes an additional argument for excluding the contention that you are to introduce into the word 'profits' some ideas connected, not with the nature of the thing, but with the manner and rule of its application. What are the 'gains' of a trade? If it could be reasonably contended that the word 'profits' in these (Income Tax) Acts has reference to some advantage which the persons carrying on the concern are to derive from it, it might be said, perhaps, that the same argument might have been raised upon the word 'gains'; but, to my mind, it is reasonably plain that the 'gains' of a trade are that which is gained by the trading, for whatever purpose it is used-whether it is gained for the benefit of a community or for the benefit of individuals. Whether the benefit is to be obtained by dividends. or whether it is to be obtained by lightening and diminishing public burdens, it is all the same." Per Selborne, L. C., Mersey Docks v. Lucas, 53 L. J. Q. B. 7: 8 App. Ca. 891; 49 L. T. 781; 32 W. R. 34; 48 J. P. 212.

"The gains of a trade [within the meaning of 16 & 17 Vict. c. 34, sched. D. which imposes income tax on the annual profits or gains arising or accruing to any person from any profession, trade,

etc.] are what is gained by the trading for whatever purpose it is used." Lord Fitzgerald in Last v. London Assurance Corporation, 10 App. Cas. 450, quoting from Mersey Docks v. Lucas, 8 App. Cas. 912.

GALL.

A defect. Brossman v. Drake, 232 Ill. 414.

GALLI HALPENS, OR GALLI HALFPENCE.

A kind of coin which, with suskins and doitkins, was forbidden by St. 3 Hen. V. c. 1; 4 Bl. Comm. 99; 3 Reeve, Hist. Eng. Law, 261.

GALLON.

Weights and Measures Act.

The word "gallon" has a fixed and definite meaning in this state, as defined by section 1 of the Weights and Measures Act. (J. & A. ¶ 11528), which must be adopted when there is a doubt as to the sense in which the quoted term is used in a written contract. Heath etc. Co. v. National etc. Co., 93 Ill. App. 16.

GAMBLER.

One who follows or practices games of chance or skill, with the expectation and purpose of thereby winning money or other property. Buckley v. O'Neil, 113 Mass. 193.

GAMBLING.

The hazard on small amounts to win larger amounts is gambling. Almy Mfg. Co. v. City of Chicago, 202 Ill. App. 240.

GAMBLING CONTRACT.

Where the principal subject matter of a contract is a legitimate business transaction, and the option contained in the contract is only incidental to the main transaction, such transaction is not a "gambling contract," within the meaning of section 130 of division 1 of the Criminal Code (J. & A. ¶3733). Consolidated etc. Co. v. Jones etc. Co., 232 Ill. 329; Bates v. Woods, 225 Ill. 134. But it is otherwise where it appears that the contract is a mere cover or disguise for a wager on the price of a commodity. Bates v. Woods, 225 Ill. 134; Doxey v. Spaids, 8 Ill. App. 550.

A contract for the delivery of property in the future made with no intention that the property shall be delivered, but with the express or implied understanding that settlement shall be made by payment of the difference between the contract price and the market price at the time fixed or some future time is a "gambling contract," within the meaning of section 130 of division 1 of the Criminal Code (J. & A. ¶ 3733). Pratt v. Ashmore, 224 Ill. 591; Jamieson v. Wallace, 167 Ill. 396; Pope v. Hanke, 155 Ill. 621; Schneider v. Turner, 130 Ill. 39; Miller v. Bensley, 20 Ill. App. 532.

In order to constitute a "gambling contract," within the meaning of section 130 of division 1 of the Criminal Code (J. & A.¶ 3733), it must appear that neither party intended a delivery, and that both intended to settle by paying differences. Pratt v. Ashmore, 224 Ill. 591; Bartlett v. Slusher, 215 Ill. 350; Jamieson v. Wallace, 167 Ill. 396; Pope v. Hanke, 155 Ill. 622. The intention of the parties is a question of fact on all the evidence (Pratt v. Ashmore, 224 Ill. 591; Bartlett v. Slusher, 215 Ill. 350; Weare etc. Co. v. People, 209 Ill. 539; Jamieson v. Wallace, 167 Ill. 396; Miller v. Bensley, 20 Ill. App. 532), and may be established from their assertions, the nature of the transaction and the manner and method of carrying on the business. Pratt v. Ashmore, 224 Ill. 591; Jamieson v. Wallace, 167 Ill. 396; Pope v. Hanke, 155 Ill. 622. For other cases construing the same expression see Pelouse v. Slaughter, 241 Ill. 215; First etc. Bank v. Miller, 235 Ill. 135; Chicago etc. Co. v. People, 214 Ill. 421; Miles v. Andrews, 153 Ill. 262; Fox v. Steever, 156 Ill. 622; Foss v. Cummings, 149 Ill. 353; Cothran v. Ellis, 125 Ill. 496; Pearce v. Foote, 113 Ill. 228; Cole v. Milmine, 88 Ill. 349; Logan v. Musick, 81 Ill. 415; Pixley

v. Boynton, 79 Ill. 351; Pickering v. Cease, 79 Ill. 329; Beggs v. Postal etc. Co., 159 Ill. App. 247; Ennis v. Edgar, 154 Ill. App. 543; Johnson v. Milmine, 150 Ill. App. 208; Dunbar v. Armstrong, 115 Ill. App. 549; Tenney v. Foote, 95 Ill. 99; Sanborn v. Benedict, 78 Ill. 309; Warren v. Scanlan, 59 Ill. App. 138; Benson v. B. H. Morgan & Co., 26 Ill. App. 22; Coffman v. Young, 20 Ill. App. 76; McCormick v. Nichols, 19 Ill. App. 334.

All contracts made between parties who have no intention of delivering or receiving the property but intend to settle by differences that may exist in the market price of the article at time of settlement and at time of contracting, are gambling contracts and therefore void. MacNeil's Ill. Evidence 585.

One in which the parties in effect stipulate that they shall gain or lose upon the happening of an uncertain event in which they have no interest except that arising from the possibility of such gain or loss. 153 Pa. St. 247.

Gambling contracts may be by bet or wager, which is their simplest form; by lottery; or they may be disguised in the form of a legitimate transaction, the ordinary form being by dealing in futures. The validity of such contracts depends on whether the intention of the parties at the inception is to deliver the goods bargained for, or to settle on the basis of difference in price (Pope v. Hanke, 155 Ill. 617; Lowry v. Dillman, 59 Wis. 197). The course of speculative dealing has given rise to a number of technical terms, some of which are here defined.

Corner.

An artificial scarcity created by holding property off the market for the extortion of abnormally high prices. Where the purchases of any party or parties exceed the amount of contract grain in regular warehouses on the last delivery day of the month for which such purchases have been made, the grain so bought is said to be cornered.

Cover.

The buying in of grain or stocks to fill short contracts is called "covering."

Covering Shorts.

Buying in property to fill contracts (usually for future delivery) previously made.

Delivery.

When stock is brought to the buyer in exact accordance with the rules of the stock exchange it is called a "good delivery." When there are irregularities, the shares being of unacceptable issues, or the rules of the exchange being contravened in some particular, the delivery is pronounced "bad," and the buyer can appeal to the board. Also when warehouse receipts for grain are delivered in fulfillment of contracts.

For a Turn.

Said of a speculative investment for a small profit or loss. A quick play. A "fiyer." See infra, this title, "Scalping."

Futures.

Buyers of cash products protect themselves against possible loss by selling an agreed amount for future delivery in some general market. Such contracts are called "futures" because they do not terminate until some designated month in the future. These transactions pass from hand to hand, and may be turned over hundreds and thousands of times in an active market before maturity, and this is called "dealing in futures." Nearly all speculative operations are in futures.

Hedge.

The operation called "hedging" by speculators is practically the same as "straddling," though the terms are not synonymous. Traders hedge to avert a loss, and straddle for a profit. See infra, this title, "Straddle."

Holding the Market.

Buying sufficient stock or commodities to keep the price from declining.

In Sight.

Said of stocks of grain, cotton, coffee, or other merchandise available for immediate use. Grain stored in private warehouses, or held by producers, is not usually included in the supply "in sight."

Insiders.

Those who own a controlling interest or an important interest in the stocks of a concern, and who are therefore influential in directing its affairs.

Investment Buying.

This phrase is generally used in contradistinction to buying for speculation, or for a quick turn in the market. It is understood to mean buying to hold for a considerable time.

Long.

One who has property bought in anticipation of a rise in price. Hence, for a trader to be "long" of stocks or grain presupposes him to be a "bull." Also used adjectively.

Long Interest.

The aggregate amount of investment holdings in any speculative market.

Long Market.

A market that is over-bought, the volume of open contracts to buy property for future delivery being in dangerous excess of the probable demand.

Margin.

Money or collaterals deposited with a broker to protect contracts, usually for future delivery.

Option.

Property bought or sold at the call or demand of the buyer or seller, as may be specified; a conditional contract.

Outsiders.

The general trading public. The investors in stock or grain who base their judgment largely on the general situation.

Pegged.

Said of a market that refuses either to advance or to decline, because brokers have been supplied with selling or buying orders in excess of the demand.

Privileges, Puts and Calls.

A "put" is the privilege or option, which a person purchases, of "putting," ing i. e., delivering property or contracts for ply.

property to the seller of such privilege, at a named price, within a stipulated time, -one or more days, weeks, or months. "Puts" are good (from the buyer's standpoint) when the market declines below the "put" price within the time covered by the privilege contract. The buyer can then buy the property at the cheaper figure, and "put" it to the person who sold him the risk, his profit being the difference between the "put" price and the quotation at which the property is bought with which to make the delivery. "call" is the reverse of a "put," the purchaser of a "call" acquiring the right to "call" upon the seller of the privilege for property, or contracts for property, at a named price, within a stipulated time. "Calls" are good when the market advances above the call price, and the buyer of such privilege is enabled to sell at a profit the property "called" from the seller of the privilege. Trading in privileges is illegal in some states, notably in Illinois.

Pyramiding.

Enlarging one's operations by the use of profits which one has made.

Scalper.

One who trades in options continually, and, by reading the temper of the market at the moment, tries to get a profit out of the minor fluctuations.

Scalping.

Buying and selling on small fluctuations of the market. Taking a small profit or a small loss.

Short, or Short Interest.

The seller of a property which he does not possess and will not deliver until he has afterwards bought the same is called a "short." He is, by necessity, a "bear." The aggregate amount of such shortage by these sellers is called the "short interest."

Short Market.

A market that is over-sold; the volume of open contracts to deliver property being in dangerous excess of available supply.

Short Selling.

The process of selling property for future delivery, in the expectation of being able to obtain the property cheaper before the maturity of contract, or of being able to close out the contract at a profit without the actual delivery of the property.

Split.

A transaction, one-half at one quotation and one-half at another. For instance, the quotation 53-%-% means that one-half of the quantity traded in was at 53% and the other half at 53%. This quotation is just half-way between 53% and 53%. Only an even number of thousand bushels can be traded in on a split, as, for instance, 2,000, 6,000, 10,000, etc.

Spread.

A "spread" is a double privilege entitling the holder to deliver to, or to demand from, the signer a certain amount of stock on the terms specified. Differences in prices, as between May and July wheat, or between the put and call price, or between the price of the same option in different cities.

Squeezed.

Said of "short sellers," who, by reason of having oversold the market, are forced to pay an artificially high price for property with which to fill contracts.

Stop Order.

An operator may give his broker orders to close out his deals when the market goes against him, and when quotations reach a certain point, and in that case he is said to have given a "stop order." When a declining market is filled with "stop orders" to sell, the bears may make extraordinary efforts to force quotations down to a point which reaches the "stop orders," and which will thus throw on the market more securities or commodities. In the same way, on an advancing market, the bulls may endeavor to raise quotations to a point that will reach stop orders of short sellers, and force their brokers to become buyers.

Straddle.

A trader who is "long" of one option and "short" of another option has "straddled" the market. Example: A. buys corn for May delivery, and sells an equal amount for December delivery, in the expectation that the former will advance and the latter decline. It is also called a "straddle" when a trader buys property for future delivery in one market, and sells in another.

Wash Trades.

Pretended trading. Trades made on an open market by parties between whom there is a tacit or private understanding that they shall be void. Done with a view to influence prices, and considered a . reprehensible practice.

GAMBLING DEVICE.

The keeping of a slot or other machine specified in the act of 1895 as a gambling device is a criminal offense, whether the machine is actually used or kept for gambling purposes or not. Bobel v. The People, 173 Ill. 27.

Gambling Policies.

Those where the persons for whose use they issue have no pecuniary interest in the life insured. Gambs v. Covenant Ins. Co., 50 Mo. 47.

GAMBLING TRANSACTION.

Options.

No matter what form the transaction bears as to the terms of the contract, still, if such form be colorable only, and the real intenton of the parties be that there is to be no sale of the article, no delivery or acceptance of it, but the transaction to be adjusted only upon differences, it is a gambling transaction within the statute. Miller v. Bensley & Wagner, 20 Ill. App. 532.

GAME.

Animals.

The word "game" means birds and beasts of a wild nature obtained by fowling and hunting. (Bouvier's Law Dict. title "Game.") Quail and other wild fowl or birds fit for food are included within the meaning of the word "game." People v. O'Neill, 71 Mich. 325. It is to be presumed the General Assembly, in framing the title to the act, employed the word "game" in its proper sense, and therefore as including all game birds, game fowl and all game animals. being true, it is clear the words "wild fowl and birds" were added for the reason the word "game" did not include certain species of wild fowl and birds designed to be protected by the act. The intent which controlled in the addition of these words was, that the title should disclose that birds and fowl which were not game birds or game fowl were objects of the enactment. This intent being unmistakable, the general and specific words employed in the title of the act do not take color from each other, for the reason the purpose to be attained by the application of the maxim ejusdem generis is to enable the court to ascertain and effectuate the legislative intent, and not for the purpose of defeating it. People, 198 Ill. 259, 260.)

Sports.

In our language, the word game has a very broad and comprehensive signification. It means sport of any kind, and means physical contests, whether of man or beast, when practiced for the purpose of deciding wagers or rewards, or for the purpose of diversion, as well as games of hazard or skill by means of instruments or devices. Such were the Olympic and Nemean games among the Greeks, the former of which are lately being revived and Appollinarian and Capitoline games among the Romans. Tatman v. Strader, 23 Ill. 440.

"Base ball does not belong to the same class, kind, species or genus as horse-racing, cock-fighting, or card playing. It is to America what cricket is to England. It is a sport or athletic exercise, and is commonly called a game, but it is not a gambling game nor productive of immorality. In a qualified sense it is affected by chance, but it is primarily and properly a game of science, of physical or in part by lot owhich judgment, properly and the same which judgment, properly a space of science, and is commonly called a game, but it is not a gambling game nor productive of improperly a game of science, of physical or in part by lot owhich judgment, properly and is commonly called a game, but it is not a gambling game nor productive of improperly a game of science, of physical or in part by lot owhich judgment, properly and the same which judgment, properly and the same have honestly the same have have have have have have have

skill, of trained endurance and of natural adaptability to athletic skill." Ex parte Neet (1900), 157 Mo. 536.

A game is a trial of skill, or chance, or of skill and chance, between two or more contending parties, according to some rule by which each one may succeed or fail in the trial. Stearns v. The State, 21 Texas 694.

A foot-race is a "lawful game" (Batty v. Marriott, 17 L. J. C. P. 215; 5 C. B. 818). So are billiards (Parsons v. Alexander, 24 L. J. Q. B. 277; 5 E. & B. 263), dominoes, chess or draughts (R. v. Ashton, 22 L. J. M. C. 1; 1 E. & B. 286). So cards would seem, per se, not unlawful. Patten v. Rhymer, 29 L. J. M. C. 189.

Subscriptions or contributions for any plate, prize or sum of money, to be awarded to the winner "of any lawful game, sport, pastime, or exercise," are legal (V. proviso to s. 18, Gaming Act, 8 & 9 V. c. 109). But a match for so much a side is a wager and not within this proviso. Diggle v. Higgs, 2 Ex. D. 422: Trimble v. Hill, 5 App. Ca. 342: overruling Batty v. Marriott, sup.

Distinguished from Wager.

A game is a thing played. A wager is the bet or stake laid upon the result of the game. Woodcock v. McQueen, 11 Ind. 15.

Gambling.

The statute authorizing the recovery of money lost "at any gaming, or playing at cards, dice, or any other game or games," applies to money wagered and lost on a horse race, and the same may be recovered back. Tatman v. Strader, 23 Ill. 439.

Game of Chance.

Such a game, as is determined entirely or in part by lot or mere luck, and in which judgment, practice, skill, or adroitness have honestly no office at all, or are thwarted by chance. State v. Gupton, 8 Ired. Law. (N. C.) 273.

GAME COCK.

A cock kept for fighting. Tatman v. Strader, 23 Ill. 440,

GAME MAN.

A man possessed of spirit and courage, and physical strength and endurance, qualifying him for personal contests. Tatman v. Strader, 23 Ill. 440.

GAMING.

A game which is not in itself unlawful, may be contested without its constituting gaming, but if money is staked upon it, it becomes gaming, and unlawful. Anderson's Law Dictionary, 484. It is the risking of money between two or more persons, on a contest or chance where one must be the loser and the other the gainer, that constitutes gaming. Ibid; 2 Wharton's Crim. Law, Sec. 1465. Swigart v. The People, 50 Ill. App. 190.

Where the transaction shows an intent merely to traffic in differences which are determined by chance, it is gaming, by whatever method the price may be fixed, and is within the meaning of section 130, Criminal Code. N. Y. & Chicago Grain and Stock Exch. v. Mellen, 27 Ill. App. 557.

County court held to have decided properly in disallowing a claim for fitting a mare of defendants for a race on which money was bet, though the race was not run; the fitting the mare—training her, being for the purpose of gaming. Tatman v. Strader, 23 Ill. 442; Mosher v. Griffin et al., 51 Ill. 184.

Gaming is the risking of money, between two or more persons, on a contest or chance of any kind, where one must be the loser and the other the gainer. Portis v. State, 27 Ark. 362.

Any contest, or course of action commenced and prosecuted in consequence of a bet or wager, and with a view to determine the bet or wager, upon the event of such contest or course of action, is gaming. State v. Smith, Meigs (Tenn.) 101.

The term "gaming" implies something which in its nature depends on chance, or in which chance is an element. Bew v. Harston, 3 Q. B. Div. 456.

Gaming is an agreement between two or more, to risk money on a contest or chance of any kind, where one must be loser and the other gainer. Bell v. State, 5 Sneed (Tenn.) 509.

To constitute gaming, one or other of the parties must expect to profit by the game. Blewett v. The State, 2 Morris St. Cases (Miss.) 1079.

"To game," is to play at any game, whether of skill or chance, for money or money's worth; and the act is not less gaming because the game played is not in itself unlawful (R. v. Ashton, 22 L. J. M. C. 1; 1 E. & B. 286: Patten v. Rhymer, 29 L. J. M. C. 189: Parsons v. Alexander, 24 L. J. Q. B. 277; 5 E. & B. 263: Bew v. Harston, 47 L. J. M. C. 121; 3 Q. B. D. 454; 26 W. R. 915; 42 J. P. 808: Dyson v. Mason, 58 L. J. M. C. 55; 22 Q. B. D. 351; 5 Times Rep. 230). In view of the "serious doubts" expressed by Cockburn, C. J., in Bew v. Harston, sup., the clause in the above definition expressed in the words "whether of skill or chance" cannot be regarded as absolutely settled by authority.

An innkeeper is guilty of an offence against his license prohibiting "any gaming whatsoever," and he or any licensed person is guilty of suffering "any gaming" within s. 17, Licensing Act, 1872 (35 & 36 V. c. 94), if he permits, even his private friends, to play at cards or other games of chance for money or money's worth, however small the stakes (Foot v. Baker, 6 Sc. N. R. 301; 5 M. & B. 335; 11 J. P. 444: Patten v. Rhymer, sup.). And convictions against licensed persons for allowing games of skill,--such as ten pins, skittles, skittlepool, "puff and dart,"—to be played for money or money's worth have been supported. Danford v. Taylor, 33 J. P. 277: Luff v. Leaper, 36 J. P. 54: Dyson v. Mason, sup.: Bew v. Harston, sup.

"It seems established that the playing of skittle-pool for money is gaming under a statute prohibiting 'any gaming or any unlawful gaming to be carried on.'" Dyson v. Mason, 58 L. J. M. C. 57.

"The essence of gaming and wagering is that one party is to win and the other to lose upon a future event which at the time of the contract is of an uncertain

nature." Tracker v. Hardy, 4 Q. B. D. 695, per Cotton, L. J.

"Betting money on a horse race is gaming." Shaffner v. Pinchback, 133 Ill. 410, citing Talman v. Strader, 23 Ill. 442.

"Gaming is an offense that one person can not commit alone,—he must, of necessity, have an accomplice." Minter v. People, 139 Ill. 367.

GAMING HOUSE.

A house kept for the purpose of permitting persons to gamble for money or other valuable thing. Robbins v. People, 95 Ill. 178.

GAMING OR WAGERING CONTRACTS.

The Act (8 & 9 V. c. 109, s. 18) which renders null and void, "all contracts or agreements by way of gaming or wagering," means contracts or agreements for wagers; and relates only to contracts which are themselves by way of wagering (per Cleasby, B., in Beeston v. Beeston, 45 L. J. Ex. 232; 1 Ex. D. 13). Therefore an agreement between two persons that one shall make bets for the other, is not a contract "by way of gaming or wagering." And, accordingly, money won and received by a betting agent may be recovered from him by his principal (Beeston v. Beeston, sup.: Bridger v. Savage, 15 Q. B. D. 363; 54 L. J. Q. B. 464; 53 L. T. 129; 33 W. R. 891; 49 J. P. 725); and the agent may recover from his principal all moneys paid in pursuance of a betting agency (Rosewarne v. Billing, 33 L. J. C. P. 55; 15 C. B. N. S. 316: Bubb v. Velverton, Ker's Claim, 19 W. R. 739; 24 L. T. 822: Bubb v. Yelverton, Steel & Nicholl's Claim, 39 L. J. Ch. 428; L. R. 9 Eq. 471: Re Lister, 47 L. J. Bank. 100; 8 Ch. D. 754). And, "if a person employs another to bet for him in his (the agent's) own name, an authority to pay the bets if lost is coupled with the employment; and although before the bet is made the employment and authority are both revocable,-the moment the employment is fulfilled by the making of the bet, the authority to pay it if lost becomes irrevocable," and the liability of the principal is, consequently, irrevocable. Per Hawkins, J., Read v. Anderson, 52 L. J. Q. B. 219; 13 Q. B. D. 779: Vth. Lilley v. Rankin, 56 L. J. Q. B. 248: Cohen v. Kittell, 58 L. J. Q. B. 241; 22 Q. B. D. 680: Seymour v. Bridge, 54 L. J. Q. B. 347; 14 Q. B. D. 460: Perry v. Barnett, 54 L. J. Q. B. 351, 446; 15 Q. B. D. 388. Vh. 5 & 6 W. 4, c. 41.

GANANCIAL PROPERTY.

That which husband and wife, living together, acquire during matrimony, by a common title, lucrative or onerous; or those which husband and wife or either acquire by purchase, or by their labor and industry, as also the fruits of the separate property which each brings to the matrimony or acquires by lucrative title during the continuance of the partnership. Cartwright v. Cartwright, 18 Tex. 634.

Ganancial property is all that which is increased or multiplied during marriage. Cutter v. Waddington, 22 Mo. 255.

GANGWAY.

A passage-way or avenue into or out of any inclosed place. Sangamon, etc., Co. v. Wiggerhaus, 122 Ill. 284.

Nautical Sense.

In a nautical sense the term "gang-way" is used to designate a particular part of a vessel. Sangamon, etc., Co. v. Wiggerhaus, 122 Ill. 284.

GANTELOPE.

A military punishment, in which the criminal running between the ranks receives a lash from each man. Enc. Lond. This was called "running the gauntlet," the word itself being pronounced "gauntlett."

GAOL.

From the Spanish "jaula," a cage, (derived from caula,) we have géole, gaol. Edgell v. Francis, 1 Man. & Gr. 222 n.

GARDEN.

In R. v. Hodges (Moo. & M. 341), the jury (after being directed by Parke, J.), found that a piece of ground chiefly used to grow grafted seedling pear-trees for sale (though there were also a few currant and raspberry bushes on it, and a crop of potatoes and cabbages had in the preceding summer been grown amongst the pear-trees), was not a "garden," but was a "nursery ground" only, within s. 43, 7 & 8 G. 4, c. 29. Ex p. Hammond, 14 L. J. Bank. 14; D. G. 93; 9 Jur. 358.

"Taking the definition of 'garden' found in a standard dictionary, it is 'a piece of ground enclosed and cultivated for herbs or fruits for food, or laid out for pleasure." * * * a place used by a seedsman or market gardener in his business [is not a garden within the meaning of a statute defining an allotment as, inter alia, 'any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden]." Collins, J., in Cooper v. Pearse, (1896), 1 Q. B. 566.

GARNISHMENT.

A garnishment is an attachment of the effects of the debtor in the hands of the garnishee; creating no lien upon any thing, but holding the garnishee to a personal liability. Drake on Attachment, section 453; Wade on Attachment, section 325. It reaches nothing that does not belong to the debtor. It may be, as the Georgia court calls it, a "water haul." Western R. R. v. Thornton, 60 Ga. 300. (Gregg v. Savage, 51 Ill. App. 284.)

Nature of Proceedings.

Proceedings by garnishment under the Garnishment Act (J. & A. ¶¶ 5936 et seq.) are in their nature supplementary to the judgment against the judgment debtor, and there can be no recovery in them against the garnishee unless the judgment debtor might, himself, maintain an action at law against the garnishee for whatever it is the judgment creditor seeks to recover. The garnishment proceedings when once begun constitute a suit—in a

limited sense, perhaps, but nevertheless a suit—the course of which must, as regards the garnishee, be in accordance with the statute concerning garnishment. "The proceeding is in effect a suit by the judgment debtor for the use of his creditor against the garnishee, and, generally speaking, it may be maintained in all cases where an ordinary suit (at law) would lie against the latter in favor of the judgment debtor." Bartell v. Bauman, 12 Ill. App. 452; Bank of Commerce v. Franklin, 88 Ill. App. 202.

As Statutory Proceeding.

The process of garnishment is a purely statutory proceeding and as it now exists in this state is unknown to the common law. Baltimore & O. S. W. R. Co. v. McDonald, 112 Ill. App. 395.

As Suit.

A garnishment proceeding is an ordinary suit by the defendant for the use of the plaintiff against the garnishee. London Co. v. Mossness, 108 Ill. App. 442 (citing Webster v. Steele, 75 Ill. 546; Farrell v. Pearson, 26 Ill. 463; Stahl v. Webster, 11 Ill. 515). To the same effect see Bank of Commerce v. Franklin, 88 Ill. App. 202 (quoting Bartell v. Bauman, 12 Ill. App. 450).

GAS.

An aeriform fluid. People v. Nylin, 236 Ill. 23.

Under a fire insurance excepting damage by explosion "except explosion by gas," the insurer is not liable for an explosion of gas created incidentally by the chemicals used in the works of the insured (Stanley v. Western Insrce., 37 L. J. Ex. 73; L. R. 3 Ex. 71; 17 L. T. 513; 16 W. R. 369). In that case Kelly, C. B., said,—"Strictly and philosophically speaking it is gas; but so are the component parts of the water of the ocean in their strict, philosophical and physical sense. But it appears in this case, and, without any statement to that effect, we know of our own knowledge, that though steam and vapour and substances of that description which find their way into the atmosphere strictly speaking are gas, they do not pass in ordinary parlance by the name of gas. Therefore construing the policy on the principle that these parties expressed themselves in the ordinary language, not only of men of business but even of scientific men when dealing with matters of this description, I think that the company were not to be liable for any explosion unless occasioned by illuminating gas."

GASOLINE.

A product of crude petroleum, being one of the most inflammable and explosive of the oils obtained from that substance; a refined coal or earth oil. Kings etc. Co. v. Swigert, 11 Ill. App. 598.

GATEWAY.

By a grant of "the exclusive use" of a "gateway" (with defined dimensions), not merely a right of way, but the right to use the gateway for all lawful purposes passed. Reilly v. Booth, 34 S. J. 250.

"Gateway is an ambiguous word. It may mean a right of passage, it may mean a place." Lindley, L. J. in Reilly v. Booth, Ch. D. 24.

GAVEL-KIND.

A custom in the County of Kent, in England, for all the sons to succeed to the father's inheritance. Currie v. Syndicate, 104 Ill. App. 170.

The tenure by which almost all lands in England were held prior to the Conquest, and which is still preserved in Kent. All the sons of a tenant of gavelkind lands take equally, or their heirs male and female by representation. The wife of such tenant is dowable of one-half the lands. The husband of such tenant has curtesy, whether issue be born or not, but only of one-half while without issue. Such lands do not escheat, except for treason or want of heirs. The heir of such lands may sell at fifteen years old, but must himself give livery. The rule as

to division among brothers in default of sons is the same as among the sons.

Lord Coke derives gavelkind from "gave all kinde;" for this custom gave to all the sons alike (1 Co. Litt. 140a); Lambard, from gavel, rent,—that is, land of the kind that pays rent or customary husbandry work in distinction from lands held by knight service. Perambulations of Kent, 1656, p. 585.

GELD.

(From Saxon gildan; Law Lat. geldum). A payment; tax; tribute. Laws Hen. I. c. 2; Charta Edredi Regis apud Ingulfum, c. 81; Mon. Angl. tit. 1 pp. 52, 211, 379; Mon. Angl. tit. 2 pp. 161-163; Du Cange: Blount.

The compensation for a crime.

We find geld added to the word denoting the offense, or the thing injured or destroyed, and the compound taking the meaning of compensation for that offense, or the value of that thing. Capitulare 3, Anno 813, cc. 23, 25; Carl. Magn. So wergeld, the compensation for killing a man, or his value; orfgeld, the value of cattle; angeld, the value of a single thing; octogeld, the value of eight times over, etc. Du Cange, "Geldum."

GENERAL.

Pertaining to the whole of a body, society, organization, or the like; not local, as, a general election; pertaining to, affecting or applicable to each and all the members of a class, kind or order; not particular; relating to a genus or kind; common to the many or to the greatest number; extensive, though not universal. People v. Vickroy, 266 Ill. 387.

The definition given of the word "general" * * * is: "Universal, not particularized; as opposed to special." Joost v. Sullivan, 111 Cal. 295, quoting Black's Law Dict.

Custom.

A custom is general, when the method of dealing is the universal method of those engaged in the business where the usage exists. Chicago & A. R. Co. v. Harrington, 192 Ill. 30 (citing Chicago etc. Co. v. Tilton, 87 Ill. 547).

Duty.

A duty is general when it is owing to everybody. Chicago etc. Co. v. Giese, 229 Ill. 263.

Remanding Order.

A remanding order is general when it is without specific directions. Illinois etc. Co. v. St. Louis I. M. & S. Ry. Co., 217 Ill. 507.

GENERAL AGENCY.

An authority to act in a certain character. Lawther v. Thornton, 67 Ill. App. 220.

What Constitutes.

Power to act generally in a particular business or a particular course of trade in a business, however limited, constitutes general agency, if the agent is so held out to the world, however restricted his private instructions may be. Crain v. National Bank, 114 Ill. 526; Settles v. Threlkeld, 140 Ill. App. 277 (citing Doan v. Duncan, 17 Ill. 272).

GENERAL AGENT.

One authorized to transact all of his principal's business. National etc. Co. v. Keystone etc. Co., 110 Ill. 431; Home etc. Co. v. Pierce, 75 Ill. 435; Hodges v. Bankers' etc. Co., 152 Ill. App. 382.

A general agent is one who is authorized to do all acts connected with a particular business or in a particular place, while a special agent is one who is empowered to act only in a specific transaction. (Mechem on Agency, sec. 6; 1 Am. & Eng. Ency. of Law, page 349.) Stock Yard Co. v. Mallory, etc., Co., 157 Ill. 564; National Furnace Co. v. Keystone Mfg. Co., 110 Ill. 431; Halladay v. Underwood, 90 Ill. App. 132.

A general agent is one who is empowered to act generally for the principal in some particular business, and to do all acts in connection with the particular

business. Gregg v. Wooliscroft & Co., 52 Ill. App. 221, 222.

A general agent is one authorized to transact all business of a particular kind; or a general agency may be stated to be an authority to act in a certain character; and a special agent has an authority to do a particular act. Ewell's Evans on Agency, pp. 1 and 135. The distinction drawn in Paley on Agency is, that the authority is general or special with reference to its subject, that is, according as it is confined to a single act, or is extended to all acts connected with a particular employment. Story, in his work upon Agency, adopts the same distinction. Lawther v. Thornton, 67 Ill. App. 220.

The authority of an agent being limited to a particular business, does not make it special; it may be as general in regard to that as if its range was unlim-Anderson v. Coonley, 21 Wendell, ited. 279. The acts of a general agent, or one whom a man puts in his place to transact all his business of a particular kind, will bind the principal so long as the agent keeps within the scope of his authority, though he may act contrary to his private instructions. The United States Life Insurance Co. v. The Advance Co., 80 Ill. 551; Harris v. Simmerman, 81 id. 414. It was said in Doan et al. v. Duncan, 17 Ill. 274, "We should not confound the extent of the agent's authority, whether limited or unlimited, with the nature of the agency, whether general or special. Either, acting within the general scope of the authority held out to the world by the principal, will bind him. And this may be shown by the usual acts of such agent in his principal's business, or by permitting and acquiescing in such acts when known to him, as well as by express authority and direction. The policy and reason of the rule is for the protection of the innocent, who deal upon the faith of such authority as the principal holds out or permits as being authorized and sanctioned by him. If an innocent party is to suffer, it shall fall upon him who enables the supposed agent, under his authority, to impose on others. Noble v. Nugent et al., 89 Ill. 524.

GENERAL AND SPECIFIC LEGACY.

Distinguished.

A legacy is general, where its amount or value is a charge upon the general assets in the hands of the executors, and where, if these are sufficient to meet all the provisions in the will, it must be satisfied; it is specific, when it is limited to a particular thing, subject, or chose in action, so identified as to render the bequest inapplicable to any other. Langdon v. Astor's Exrs., 3 Duer (N. Y.) 543.

A legacy is said to be general when it is not answered by any particular portion of, or article belonging to, the estate, the delivery of which will alone fulfil the intent of the testator; and when it is so answered it is said to be a specific legacy, because it consists of some specific thing belonging to the estate, which is, by the legacy, intended to be transferred in specie to the legatee. Smith v. McKitterick, 51 Iowa 551.

GENERAL AND UNIFORM.

The word "general" is defined as pertaining to the whole of a body, society, organization, or the like; not local, as, a general election; pertaining to, affecting or applicable to each and all the members of a class, kind or order; not particular; relating to a genus or kind; common to the many or to the greatest number; extensive, though not universal. (Webster's New Int. Dict.; 20 Cyc. 1182, and cases cited.) A general law is one framed in general terms and restricted to no locality, operating equally upon all of a group of objects which, having regard to the purpose of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves. State, Trenton Iron Co. v. Yard, 42 N. J. Law, 357; 4 Words and Phrases, 3066, and cases cited. The word "local" is used as a counter-term to "general." People v. Wilcox, 237 Ill. 424. Laws are general and uniform when they operate alike upon all who are in the same situation. A law is general, not because it embraces all the governed, but that it may, from its terms, when many are embraced in its provisions, embrace all others when they occupy a like position to those who are embraced. Hawthorn v. People, 109 Ill. 312; People v. Hazelwood, 116 Ill. 329; City of Clinton v. Wilson, 257 Ill. 580. It is not necessary that a law to be general, should apply to every person in the state. Very few laws do so apply. An act is general in its nature and uniform in its operation if it acts upon all persons coming within its scope. People v. Kewanee Light Co., 262 Ill. 262; People v. Vickroy, 266 Ill. 388.

Laws are general and uniform, not because they operate on every person in the state, for they do not, but because every person who is brought within the relation or circumstances provided for is affected by the laws, being general and uniform in their operation upon all persons in like situation, and the fact of their being general and uniform being not affected by the number of those within the scope of their operation. Arms v. Ayer, 192 Ill. 613; People v. Wright, 70 Ill. 398; Potwin v. Johnson, 108 Ill. 79; Hawthorn v. People, 109 Ill. 312; People ex rel v. Hazelwood, 116 Ill. 329.

GENERAL APPEARANCE.

An appearance for any other purpose than to question the jurisdiction of the court is general. Nicholes v. People, 165 Ill. 504; McChesney v. People, 178 Ill. 548; Dickey & Baker v. People, 213 Ill. 51; People v. Smythe, 232 Ill. 244; People v. Cemetery Ass'n, 266 Ill. 33; Ladies of Maccabees v. Harrington, 227 Ill. 524.

Any action on the part of the defendant except to object to the jurisdiction, which recognizes the case as in court will amount to a general appearance. Paterson, etc., Co. v. First, etc., Bank, 133 Ill. App. 81.

Where a party appears for purposes other than to show he is not properly before the court, he is deemed to have entered a general appearance for all purposes. Abbott v. Semple, 25 Ill. 93; Baldwin v. Economy Furniture Co., 70 Ill. App. 50.

In Crull v. Keener, 18 Ill. 66, it was

said: "There are cases where the defendant may make a quasi appearance for the purpose of objecting to the manner in which he is brought before the court, and in fact to show that he is not legally there at all, but if he ever appears to the merits he submits himself completely to the jurisdiction of the court and must abide the consequences." If he appears to the merits no statement that he does not will avail him, and if he makes a defense which can only be sustained by an exercise of jurisdiction, the appearance is general, whether it is in terms limited to a special purpose or not. 2 Ency. of Pl. and Pr. 625. Nicholes v. The People, 165 Ill. 504.

A defendant who files a stipulation for the continuance of a motion for a preliminary injunction, recognizes the jurisdiction of the court in a manner amounting to a general appearance, and he cannot subsequently deny jurisdiction upon the ground that no summons was issued. Tagert v. Fletcher, 232 Ill. 199.

A defendant who appears and makes a motion or files a plea, or takes any other step in the case which the court would have no power to dispose of without jurisdiction of the defendant's person, waives the objection to jurisdiction of his person, whether his appearance is limited or not. Ladies of Maccabees v. Harrington, 227 Ill. 525.

If the defendant, upon entering his appearance, pleads to the action, or takes such steps in the cause as require the plaintiff to proceed, a present appearance has been entered for all purposes, and the appearance is then to be deemed as appearance for the purposes of a trial. Baldwin v. McClelland, 152 Ill. 54.

GENERAL ASSIGNMENT.

An assignment of a specified fund to one creditor to secure his debt due is not a general assignment and is not obnoxious to the law of Illinois. Deane v. John A. Tolman Co., 83 Ill. App. 487.

GENERAL ASSUMPSIT.

A form of the action of assumpsit brought at common law on an implied

contract. Highway Commissioners v. Bloomington, 253 Ill. 172.

GENERAL AVERAGE.

General average contribution is defined to be a contribution by all the parties in a sea adventure to make good the loss sustained by one of their number on account of sacrifices voluntarily made on part of the ship or cargo to save the residue and the lives of those on board from an impending peril, or for extraordinary expense necessarily incurred by one or more of the parties for the general benefit of all the interests embarked in the enterprise. Losses which give a claim to general average are usually divided into two great classes: (1.) Those which arise from sacrifices of part of the ship or part of the cargo, purposely made in order to save the whole adventure from perishing. (2.) Those which arise out of extraordinary expenses incurred for the joint benefit of ship and cargo. Star of Hope, 9 Wallace (U. S.) 228.

"General average, as is explained in Abbott on Shipping, Part III, chapter 8 (page 342 of the fifth edition, * * *), is founded on the Rhodian law, which however in terms did not extend further than to cases of jettison, but its principle applies and it has been applied to all other cases of voluntary sacrifice for the benefit of all, that is, if properly made. Those things which are actually saved in the sense explained in Abbott on Shipping, Part III, chapter 8, sect. 13, fifth edition, p. 355 must contribute.

"In Kemp v. Halliday [6 B. & S. 746] I said: 'In order to give rise to a charge as general average, it is essential that there should be a voluntary sacrifice to preserve more subjects than one exposed to a common jeopardy, but an extraordinary expenditure incurred for that purpose is as much a sacrifice as if instead of money being expended money's worth were thrown away. It is immaterial whether the shipowner sacrifices a cable or an anchor to get the ship off a shoal, or pays the worth of it to hire those extra services which get her off. It is quite true that so long as the expenditure

by the shipowner is merely such as he would incur in the fulfilment of his ordinary duty as shipowner it cannot be general average.' And I may observe that in the specimen of an adjustment given in Abbott on Shipping, Part III, chap. 8, sect. 16, p. 359, 5th edition, and sanctioned by Lord Tenterden's high authority, one of the items allowed is 'expense of bringing the ship off the sands, £50.' That item must have been a disbursement to pay * * * I do not for services hired. think that it would follow merely from the shipowner having become liable to pay, and having paid [a certain] sum, that the whole of it was chargeable to general average." Lord Blackburn in Anderson Tritton & Co. v. Ocean Steamship Co., 10 App. Cas. 114, 115.

GENERAL BENEFITS.

See also Special Benefits.

general, intangible benefits which are supposed to flow to the general public from a public improvement. The effect of such general benefits upon a particular piece of property would, however, be impossible of ascertainment in money value, and therefore too speculative to be considered on the question of damages to the remainder. The fact that other pieces of property in the vicinity are also specially benefited by the improvement furnishes no excuse for excluding from consideration special benefits to the particular property in determining whether or not it has been damaged, and if it has, the extent of the depreciation. If property is increased in value by an improvement it is a special benefit to the property. The benefit must be such as affects the market value of the land, and where this market value is increased as the effect of the improvement a special benefit results. Any benefits which are not conjectural or speculative and which enhance the market value of such property are to be considered as special benefits and not as general benefits. Sanitary District v. Boening, 267 Ill. 124.

"Special Benefits" Distinguished.

Special benefits do not become general benefits because they are common to

other property in the vicinity. Sanitary District v. Boening, 267 Ill. 124 (citing Brand v. Union E. R. Co., 258 Ill. 133; Eldorado M. & S. R. Co. v. Everett, 225 Ill. 529; Peoria, etc., Co. v. Vance, 225 Ill. 270; Chicago v. Lonergan, 196 Ill. 518; Fahnestock v. Peoria, 171 Ill. 454; Davis v. Northwestern E. R. Co., 170 Ill. 595; Metropolitan W. S. E. R. Co. v. White, 166 Ill 375; Metropolitan W. S. E. R. Co. v. Stickney, 150 Ill. 362.)

GENERAL CHARACTER.

The general character of a person is the estimate in which he is held in the neighborhood where he has resided. some cases of circumstantial evidence, where the evidence for the people and the defendant is nearly balanced, good character may be very important to the defendant's defense. This court has held that particular acts of misconduct are never admissible in rebuttal of the defendant's good character. In McCarty v. People, 51 Ill. 231, the question arose whether, after the defendant had given evidence of his good character by general reputation, the trial court erred in permitting the prosecution to give in evidence particular acts of misconduct or crime in rebuttal,-and that by rumors and reports in the country. The court held the admission of the evidence erroneous and reversed the judgment for that error alone. In the decision of the case it was said: "Were this the law, no person arraigned for crime, in which his uniform good character prior to the alleged offense, which this court has said is an element proper for the jury to consider in the trial of all offenses, had been established by testimony, would incur the risk attendant upon the production of such proof, if it could be rebutted by proof of rumors or reports of particular aberrations. Every man is presumed ready at all times to defend his general character but not his individual acts. those he must have due notice. No matter how pure one's life may be, he would hardly venture upon the proof if to be followed by such consequences. This rule was recognized and approved in Gifford

v. People, 87 Ill. 210, where Gifford, the plaintiff in error, was convicted of the crime of rape. On the cross-examination of Prosper Washburn, a witness introduced by the defendant to prove former good character, he was asked, "Have you not heard people say that he (alluding to the defendant) was a gambler or gambled?" This was objected to, but the objection was overruled by the court and the witness answered that he had heard some say he gambled. Again, when the defendant gave evidence in his own behalf, he was compelled, over his counsel's objection, to state that he had visited houses of ill-fame in Cleveland and Chicago, and of the number of times, and of having had connection with their inmates, and also that he had played cards for money. In passing on the question it was said (p. 214): "We have no doubt this evidence seriously prejudiced the defendant with the jury. Evidence of prior misconduct is never admissible in a criminal trial unless it be to prove prior malice towards an individual or guilty knowledge, neither of which can have pertinency in cases like the present. (1 Wharton on Crim. Law,-7th ed.-section 639; Roscoe on Crim. Evidence,-Cowen, Hill & Edw. notes,-p. 765.) And particular acts of misconduct are never admissible (McCarty v. People, 51 Ill. 231). Nor can it be said this evidence was admissible for the purpose of impeaching the defendant's reputation as a witness, only, although not for the purpose of proving the offense charged. The reputation of a witness cannot be impeached by proof of particular acts: it must be by proving his general reputation for truth and veracity to be bad. Frye v. Bank of Illinois, 11 Ill. 367; Eason v. Chapman, 21 Ill. 35; Crabtree v. Kile, 21 Ill. 180; Hansell v. Erickson, 28 Ill. 257; Dimick v. Downs, 82 Ill. 570."

In Wharton on Criminal Evidence (section 61) the author says: "Where a defendant has voluntarily put his character in issue and evidence for the prosecution has been introduced in rebuttal. it has been said that the examination may be extended to particular facts, though isdictions; and viewing the question in regard to principle, we must hold it to be oppressive to a defendant, as well as irrelevant to the real issue, to admit in rebuttal, on whatever pretext, a series of independent facts forming each a constituent offense." Aiken v. The People, 183 Ill. 220, 221.

General Repute.

"Evidence of character goes to general repute, not particular acts, or specified conduct, the parties litigant being presumed to be prepared to meet the one and not the other, which might often do injustice by taking by surprise. * * Such evidence, moreover, must be in the nature of reputation, and not the individual opinion of the witnesses as to the disposition or tendency of the prisoner's mind." Hussey v. State, 87 Ala. 133.

GENERAL CIRCULATION.

A newspaper is of general circulation when it circulates among all classes and is not confined to a particular class or calling in the community. Railton v. Lauder, 126 Ill. 219. Polzin v. Rand McNally & Co., 250 Ill. 575.

General Custom.

A general custom is a general law, and forms the law of a contract on the subject-matter. Though at variance with its terms, it enters into and controls its stipulations as an act of parliament or of a state legislature. United States v. Arredondo, 6 Peters (U.S.) 715.

GENERAL DAMAGES.

Those damages which necessarily result from the injury (Chicago C. Ry. Co. v. Taylor, 170 Ill. 58; Chicago v. Mc-Lean, 133 Ill. 153; Quincy, etc., Co. v. Hood, 77 Ill. 75; Chicago W. D. Ry. Co. v. Klauber, 9 Ill. App. 620) and which the law implies and presumes to have accrued from the wrong complained of. Olmstead v. Burke, 25 Ill. 76; Chicago W. this has properly been denied in most jur- | D. Ry. Co. v. Klauber, 9 Ill. App. 620.

GENERAL DEPOSIT.

See also Special Deposit.

A general deposit is "a deposit which is to be returned to the depositor in kind." Mutual Accident Association v. Jacobs, 141 Ill. 267.

A deposit in a bank is general unless the depositor makes it special, or deposits it expressly in some particular capacity. Brahm v. Adkins, 77 Ill. 264; Métropolitan Bank v. Mer. Bank, 182 Ill. 376; Meadowcroft v. People, 163 Ill. 73; Ward. v. Johnson et al., 95 Ill. 241.

The distinction between different kinds of deposit is treated of in chapter 13 of 1 Morse on Banks and Banking: "A deposit is general unless expressly made special or specific, or the circumstances are such as to imply that the deposit is not meant to be general; as where money is deposited enclosed in a box or bag, or Whenever the bank has a sealed up. right to mingle the funds deposited with its own and treat them as a debt due from it, even though the money may be trust property given to the bank on condition that it would pay a certain sum to the cestui during life, the deposit is general. In the absence of evidence to show that it is the bank's duty, by agreement, express or clearly implied, to keep the funds and their investment separate it must be treated as a general deposit." Woodhouse v. Crandall, 99 Ill. App. 554, 555. See also Seiter v. Mowe, 182 Ill. 351; Bayor v. Am. Trust & Savings Bank, 157 Ill. 62; Mutual Accident Association v. Jacobs, 141 Ill. 261; Wetherell v. O'Brien, 140 Ill. 146; School Trustees v. Kirwin, 25 Ill. 62; Met. Bank v. Mer. Bank, 182 Ill. 376.

GENERAL ELECTION.

The expression "general election," as used in the act of 1891, known as the Ballot Act, applies to every election held for the choice of a national, state, judicial, district or county officer, whether for the full term or for the filling of a vacancy. Act. of 1891, section 2 (J. & A. ¶ 4893); Ridgway v. Gallatin County, 181 Ill. 526.

GENERAL LAW.

A law framed in general terms and restricted to no locality, operating equally upon all of a group of objects which, having regard for the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves. People v. Vickroy, 266 Ill. 387.

"General laws" are said to be "those which relate to or bind all within the jurisdiction of the law making power, limited as that power may be in its territorial operation by constitutional restraint." Sedgwick on Stat. and Const. Law, p. 30. The number of persons upon whom the law shall have any direct effect, may be very few, by reason of the subject to which it relates, but it must operate equally and uniformly upon all brought within the relations and circumstances for which it provides. People ex rel. v. Wright, 70 Ill. 398. The People ex rel. v. Cooper et al., 83 Ill. 589.

It has been determined and has become the settled rule of construction in this state, that an act, general in its terms, and uniform in its operation upon all persons and subject-matter in like situation, is a general law and not obnoxious to the objection, that it is local or special legislation. Cummings et al. v. City of Chicago., 144 Ill. 567; Potwin v. Johnson, 108 Ill. 70; Hawthorn v. People, 109 Ill. 302; People v. Hoffman, 116 Ill. 587; Vogel v. Pekoc, 157 Ill. 344; People v. Onahan, 170 Ill. 460; Lippman v. People, 175 Ill. 107; People v. Martin, 178 Ill. 623; People v. Kaelber, 253 Ill. 554; People v. Vickroy, 266 Ill. 387.

"It is not necessary that a law, to be general, should apply to every person in the state. Very few laws do so apply, but an act which is general in its nature and uniform in its operation upon all persons coming within its scope is a general law. People v. Hoffman, 116 Ill. 597; Cummings v. City of Chicago, 144 Ill. 563; Park v. Modern Woodmen of America, 181 Ill. 214; People v. People's Gas Light Co., 205 Ill. 482. A law is general, not because it embraces all of the governed, but because it embraces all who are similarly situated and who come within its

provisions. Hawthorn v. People, 109 Ill. 312; The People v. Kewanee Light Co., 262 Ill. 262.

"This court has frequently said that if all laws were held unconstitutional because they did not embrace all persons few would stand the test; that a law is general, not because it embraces all the governed, but that it may from its terms. when many are embraced in its provisions, embrace all others when they occupy like positions to those who are embraced. law that is made applicable to a certain class or classes of citizens must be based upon some substantial difference between the situation of that class or classes and other individuals or classes to which it does not apply. Hawthorn v. People, 109 Ill. 312; Ritchie & Co. v. Wayman, 244 Ill. 509; People v. Elerding, 254 Ill. 579; City of Clinton v. Wilson, 257 Ill. 580." People v. Brady, 262 Ill. 593.

General laws have been defined to be those which relate to or bind all within the jurisdiction of the law-making power, while a special law is limited in the object to which it applies. It is often the case, however, that the rights and protection given by a law cannot be enjoyed by every citizen by reason of the subject to which the law relates. If the law is general, and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides. On the other hand, if it is limited to a particular branch or designated portion of such persons, it is special. People v. Wright, 70 Ill. 388; People v. Cooper, 83 Ill. 589; Hawthorn v. People, 109 Ill. 302; Kettles v. People, 221 Ill. 232. Although general in its character, a law may, from the nature of the case, extend only to particular classes, such as minors, married women, laborers, bankers or common carriers. Such a law is not obnoxious to the provisions of the constitution if all persons of the class are treated alike under similar circumstances and conditions, but it is not a proper application of the definition to say that a law is general because it applies uniformly to all persons in the conditions and circumstances for which it provides, although only a particular branch of a class or some particular description of persons. If an act should attempt to confer privileges only on persons of a certain stature it could be said to apply uniformly to all people answering such description, and yet it would be absurd to say that such a law would be a general one. The classification must be so general as to bring within its limits all those who are in substantially the same situation or circumstances. Lippman v. People, 175 Ill. 107.

A law is said to be general and uniform, not because it operates upon every person in the state alike, but because it operates alike upon every person in the state who is brought within the conditions and circumstances prescribed by the law. People v. Board of Supervisors, 223 Ill. 198; Douglas v. People, 225 Ill. 545. See also L., N. A. & C. Ry. Co. v. Wallace, 136 Ill. 91.

"It has been too often decided to now be a subject of legitimate controversy, that it is not required a law shall operate alike upon every person or locality in the State in order to make it a general law. It may be a general law and relate only to persons or things in a single place, or in some places and not in others, if there is any reasonable basis for such classification and reasonable relation between the situation of the persons or places classified and the purposes and objects to be attained. People v. Kaelber. 253 Ill. 554; Booth v. Opel, 244 Ill. 317; People v. Knopf, 183 Ill. 410." Martens v. Brady, 264 Ill. 186.

It does not follow that a law is not a general law because it does not operate equally upon every individual or municipal corporation in the State, but a law is a general one which operates alike upon all persons or municipal corporations in the State similarly situated. In People v. Wright, 70 Ill. 391, quoting from McAunich v. M. and M. Railroad Co., 20 Iowa, 338, it was said: "Laws are general and uniform, not because they operate upon every person in the State, for they do not, but because every person who is brought within the relations and

circumstances provided for is affected by the laws. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of those within the scope of their operation." And in Potwin v. Johnson, 108 Ill. 79, it was held that the act in relation to cities and villages was a general law and not a local and special law, although there might be municipalities in the State to which it was not applicable, such as those in existence under special charters at the time of the adoption of the constitution, which had not since sought to have their charters changed, or amended. On page 80 the court said: "After full consideration and reconsideration we are as firmly committed to the doctrine as we can be to any doctrine, that the act in relation to cities and villages is a general law, and not local or special, although there may be municipal corporations to which it is not applicable, namely, municipal corporations in existence under special charters at the time of the adoption of the constitution which have not since sought their charters changed have amended. It is general and of uniform application to all cities, towns and villages thereafter becoming incorporated thereafter having their charters changed or amended, to the extent of such change or amendment, and thus fully conforms to the definition of a general law." Reynolds v. Town of Foster, 89 Ill. 257, and in People v. Board of Supervisors, 223 Ill. 187, it was held that a law which applied only to counties under township organization was not a local or special law, within the meaning of the constitutional provision which inhibits special legislation, as such statute applied to and was operative in all counties in the State under township organization. And in People v. Hazelwood, 116 Ill. 319, on page 329, it was said: "We have held that laws are general and uniform, and hence not obnoxious to the objection that they are local or special, when they are general and uniform in their operation upon all in like situation." See also, Douglas v. People, 225 Ill. 546.

The author of the opinion in the last case, in quoting from Judge Cooley in his work on Constitutional Limitations (2d ed. p 390), says: "The whole matter is well summed up in a note in the following words: "To make a statute a public law of general obligation it is not necessary that it should be equally applicable to all parts of the State. All that is required is that it shall apply equally to all persons within the territorial limits described in the act.'" Dawson Soap Co. v. City of Chicago, 234 Ill. 316, 317, 318, 319, 320.

If a law is general and uniform in its operation upon all persons in like circumstances it is general, in a constitutional sense. "A law general in its character may extend only to particular classes and not be obnoxious to the provisions of the constitution if all persons of the same class are treated alike under similar circumstances and conditions." Chicago and Southern Traction Co. v. Illinois Central Railroad Co., 246 Ill. 156.

This court has held in many cases that it is not necessary that a law shall apply to all the people of the State under this clause of our constitution. Where a class is composed of persons possessing in common some disability, attribute or qualification, or are under some conditions marking them as proper objects in whom to vest the specific rights granted unto them, the legislature may pass a law applicable only to such class. Vogel v. Pekoc, 157 Ill. 339; Saylor v. Duel, 236 Ill. 435.

Whether laws are general or not, does not depend upon the number of those within the scope of their operation. They are general, "not because they operate upon every person in the State, for they do not, but because every person, who is brought within the relation and circumstances provided for, is affected by the laws." Nor is it necessary, in order to make a statute general, that "it should be equally applicable to all parts of the State. It is sufficient if it extends to all persons doing or omitting to do an act within the territorial limits described in the statute." People ex rel. v. Hoffman et al., 116 Ill. 597; West Chicago Park Comrs. v. McMullen et al., 134 Ill. 178.

General laws are those which relate to or bind all within the jurisdiction of the lawmaking power, limited as that power may be in its territorial operation, or by constitutional restraints. Knickerbocker v. The People, 102 Ill. 229.

The constitutional provision against special legislation does not prohibit legislation which is based upon a classification, provided the classification is founded upon a rational difference of situation or condition existing in the persons or object which are the subjects of such classification. The People v. Nellis, 249 Ill. 23.

In West Chicago Park Comrs. v. Mc-Mullen, 134 Ill. 170, the act there in question applied, on its face, to all cities having parks under the control of park commissioners, and it was objected that the act was in fact applicable only to the conditions existing in the city of Chicago, but the court there said (p. 176): "It is general in its terms and applies to all cities of the State which, at the time of its passage, had parks under the control of park commissioners, or that might at any time thereafter so have parks. If, because only a single city had such parks, an act general in its application to all cities would be local or special legislation, no valid act could be passed affecting such existing parks; and it would necessarily result from such holding, that substantially all of the park legislation, enacted since the adoption of the present constitution, should for the same reason have been held invalid. A law may be general, and yet be operative in a single place. It is not requisite that it should be presently applicable to every person, or to every city, within the State." In People v. Onahan, 170 Ill. 449, this court said (p. 459): "Although the court might know judicially that at present no county in the State but Cook has the required population, it is matter of common knowledge, which it is fair to assume, influence the legislature, that other counties are near to the prescribed limit in population, and contain cities of such size and density of population that the method of selecting the jury list applicable to less populous communities cannot, with due regard for the public welfare, continue to be applied." See also People v. Comrs. of Cook County, 176 Ill. 576; Burton Stock Car Co. v. Traeger, 187 Ill. 9; People v. Hoffman, 116 Ill. 587; Bertrand v. Taylor, 87 Ill. 235; Pettibone v. West Chic. Park Comrs., 215 Ill. 335, 336.

The fact that a law may be, or seem to be, arbitrary and unreasonable in some of its provisions does not render the same a local or special law. The test is, is it a general law and does it operate uniformly throughout the State upon all persons and localities under like circumstances? If it does, it is not obnoxious to the provision of the constitution forbidding the enactment of local or special laws. Perkins v. Commissioners, 271 Ill. 462.

A law is general not because it embraces all of the governed, but that it may, from its terms, when many are embraced within its provisions, and all others may be when they occupy the position of those who are embraced. Greene v. Fish, etc., Co., 272 Ill. 152; People v. Vickroy, 266 Ill. 388; City of Clayton v. Wilson, 257 Ill. 580; Chicago, B. & Q. R. Ry. Co. v. Doyle, 258 Ill. 632; Saylor v. Duel, 236 Ill. 435; Hawthorn v. People, 109 Ill. 302.

"A law is to be regarded as general when its provisions apply to all objects of legislation, distinguished alike by qualities and attributes which necessitate the legislation or to which the enactment has manifest relation. Such law must embrace all and exclude none whose condition and wants render such legislation equally necessary or appropriate to them as a class." Warner v. Hoagland, 51 N. J. Law 68, quoting Knapp, J. in Randolph v. Wood, 49 N. J. Law 85.

GENERAL LEGACY.

"Of legacies," says Toller on Executors, p. 301, "there are two descriptions; a general legacy and a specific legacy. The former appellation is expressive of such as are pecuniary, or merely of quantity." "A mere bequest of quantity, whether of money or of any other chattel, is a general legacy, as of a quan-

tity of stock. And where the testator has not such stock at his death, such bequest amounts to a direction to the executor to procure so much stock for the legatee. 4 Bac. Abr., 337, 425; 2 Bl. Com. 512. Rankin v. Rankin, 36 Ill. 301.

GENERAL LIEN.

A right to retain a thing, not only for charges specifically arising out of, or connected with that identical thing, but also for a general balance of accounts between the parties, in respect to other dealings of the like nature. McKenzie v. Nevius, 22 Me. 150.

GENERAL OBJECTION.

A general objection to evidence goes to its competency or relevancy, and if a will which has not been probated is incompetent as evidence of a devise, a specific objection was not required. A general objection to evidence which is incompetent in any event is sufficient. (Hardin v. Forsythe, 99 Ill. 312.) Hicks v. Deemer, 187 Ill. 168.

A general objection to an instrument offered in evidence raises questions of its relevancy or materiality only,—not a special objection which might have been removed in the trial court had it been there disclosed. Buntain v. Bailey, 27 Ill. 409; Moser v. Kreigh, 49 Ill. 84; Osgood v. Blackmore, 59 Ill. 261; Hyde v. Heath, 75 Ill. 381; Johnson v. Holloway, 82 Ill. 334; Wilson v. King, 83 Ill. 232; King v. Chicago, Danville and Vincennes Railroad Co., 98 Ill. 376; Gage v. Eddy, 186 Ill. 432. Cantwell v. Welch, 187 Ill. 279.

GENERAL PUBLIC.

Within the meaning of the rule that special damages to property taken for public use must be different in kind from those sustained by the "general public," the quoted expression does not mean the people of the State at large or of some other town or city who are not affected at all by the improvement, but it means

the people of the whole neighborhood. Illinois C. R. Co. v. Trustees of Schools, 212 Ill. 413.

GENERAL REPUTATION.

The evidence of witnesses in support of another witness is only admissible because the general reputation of that other has been assailed, and the rule is, without exception, that the witnesses speaking for or against the one assailed must first state that they know his general reputation,—that is to say, that they know what is generally said of him by "those among whom he dwells or with whom he is chiefly conversant, for it is this, only, that constitutes his general reputation or character." Magee v. The People, 139 Ill. 142.

In Magee v. People, 139 Ill. 138, it was held that general reputation is what is generally said of a person by those among whom he dwells or with whom he is chiefly conversant; and that after witnesses have testified that a person's general reputation thus established is bad, the fact that others never heard him spoken of in that regard does not tend to disprove the evidence of the impeaching witnesses. Gifford v. People, 148 Ill. 173, does not conflict with the case just cited. That decision is to the effect that a witness may know the general reputation of the person assailed, in the community where he lives, and may know and testify that such reputation is good, although he may not have heard it discussed; but it adheres to the principle well established in this State, that the impeaching or sustaining witness must state he knows the general reputation of the party among his neighbors before he can be further interrogated upon the subject. Hays v. Johnson, 92 Ill. App. 82.

GENERAL RESTRAINT OF TRADE.

One which forbids a person from employing his talents, industry, or capital, in any undertaking, within the kingdom. Holbrook v. Waters, 9 Howard's Pr. R. (N. Y.) 337.

General Retainer.

Merely gives a right to expect professional advice when requested, but none which is not requested. It binds the person retained not to take a fee from another against his retainer; but to do nothing except what he is asked to do; and for this he is to be distinctly paid. R. I. Exch. Bank v. Hawkins, 6 R. I. 206.

GENERAL SUPERINTENDENT.

A general superintendent of a railroad is one who has a general superintendence of the business affairs of the road. Toledo W. & W. R. Co. v. Rodrigues, 47 Ill. 191.

GENERAL TAXES.

Taxes levied on the ground of general public benefits. Shurtleff v. Chicago, 190 Ill. 476.

Taxes imposed for the support of government, which are borne by the citizen in return for the protection afforded to life, liberty and property, and to which all must contribute upon some basis of equality among those receiving like benefits. Rich v. Chicago, 152 Ill. 31.

GENERAL VERDICT.

A finding, by the jury, in the terms of the issue or issues referred to them. Settle v. Alison et al., 8 Georgia 208.

GENERAL WORDS.

It is a familiar rule of construction that when general words follow particular words, the former can mean only things or persons of the same kind or class as those which are particularly mentioned. Sedgwick on Stat. and Const. Law, 236; Drake et al. v. Phillips, 40 Ill. 388; Brush v. Lemma, 77 Ill. 498; Wilson v. Board of Trustees et al., 133 Ill. 470-1.

General words in a conveyance are not to be construed as merely passing easements, but must be construed "like any other words with reference to what the words are intended to mean." Per Fry, J., Willis v. Watney, 51 L. J. Ch. 181.

GENERALLY.

"And generally do all such acts and things in relation to his property * * * as may be reasonably required:"-This obligation on a bankrupt (prescribed by s. 24 (2), Bankry. Act, 1883), does not require him to submit to a medical examination with a view to an insurance on his life, and thereby the better to realize a contingent reversionary interest belonging to him (Board of Trade v. Block, 58 L. J. Q. G. 113; 13 App. Ca. 570; 4 Times Rep. 770). Fry, L. J., when that case (nom. Re Betts, 56 L. J. Q. B. 370; 19 Q. B. D. 39) was in the Court of Appeal, said, "The most anxious desire is exhibited by the legislature to prevent its special words limiting the generality of its general words, by its use of the word 'generally," and therefore that the bankrupt was bound to submit to the examination: but in the H. L., Halsbury, L. C., dissented from that view, and said that the examination was not an act "in relation to" the bankrupt's property.

GENS.

(Lat.) In Roman law. A union of families, who bore the same name, who were of an ingenuous birth (ingenui), none of whose ancestors had been a slave, and who had suffered no capitis diminutio.

Gentiles sunt, qui inter se eodem nomine sunt; qui ab ingenuis oriundi sunt; quorum majorum nemo servitutem ser vivit; qui capite non sunt deminuti. This definition is given by Cicero (Topic 6), after Scaevola, the pontifex. But, notwithstanding this high authority, the question as to the organization of the gens is involved in great obscurity and doubt. The definition of Festus is still more vague and unsatisfactory. He says: "Gentilis dicitur et ex eodem genere ortus. et is, qui simili nomine appellatur, ut ait Cincius: Gentiles mihi sunt, qui meo nomine appellaniur." Gens and genus are convertible terms; and Cicero defines the latter word: "Genus autem est quod sui similes communione quadam, specie autem differentes, duas aut plures complectitur partes." De Oratore, 1, 42. The genus is that which comprehends two or more particulars, similar to one another by having something in common, but differing in species. From this it may fairly be concluded that the gens or race comprises several families, always of ingenuous birth, resembling each other by their origin, general name,—nomen,—and common sacrifices or sacred rites,—sacra gentilitia (sui similes communione quadam),—but differing from each other by a particular name,—cognomen and agnatio (specie autem differentes).

GENTLE.

The word "gentle" does not, in its ordinary legal sense. import that the horse has received any particular training or teaching, but only that he is docile, tractable and quiet. Bodurtha v. Phelon, 2 Allen (Mass.) 348.

GENTLEMAN.

In English law. A person of superior birth. According to Sir Edward Coke, he is one who bears coat armor, the grant of which adds gentility to a man's family. The eldest son had no exclusive claim to the degree; for, according to Littleton, "every son is as great a gentleman as the eldest." 2 Inst. 667. Sir Thomas Smith, quoted by Blackstone (1 Comm. 406), says: "As for gentlemen, they are made good cheap in this kingdom; for whosoever studies the laws of the realm, who studies in the universities, who professeth liberal sciences, and, to be short, who can live idly and without manual labor, and will bear the port, charge, and countenance of a gentleman, shall be called master, and be taken for a gentleman." In the United States, this word is unknown to the law; but in many places it is applied by courtesy to all men. See Poth. Proc. Cr. § 1, Append. § 3.

"It originally signified a man of gentle birth, but the use of the term has become changed, and it is often applied to denote persons of all ranks, from the upper down to the lowest verge of the middle class."

1 C. P. Div. 61. Thus, a coal agent out of employment (3 Hurl. & N. 798), or a

medical student who had been in no business for several months (3 Hurl. & N. 382), is properly described as a "gent."

GENUINE.

Not spurious or counterfeit. Used in relation to a written instrument, it does not cover either the authority (149 N. Y. 182) or the capacity (37 N. Y. 487) of the maker.

GEOGRAPHICAL NAME.

A word which indicates no known place cannot be a geographical name within the meaning of a statute forbidding geographical names to be registered as Trade-marks. In re Densham's Trade-mark, [1895] 2 Ch. 176.

"When for forty years a place has had a particular name, though at the will of the owners, and has found its way into common parlance, and, * * *, into the maps and guide-books, and other places where one looks for distinctive names," its name is a "geographical name" within the meaning of a statute providing that geographical names shall not be registered as trade-marks. Per Kekewich, J., In re Apollinaris Co.'s Trade-marks [1891] 2 Ch. 186, 203; affirmed on appeal [1891] 2 Ch. 221, per Lindley, L. J.

GEOGRAPHY.

"Geography means in the first instance and properly a description of the divisions of the earth. * * * When for forty years a place has had a particular name, though at the will of the owners, and has found its way into common parlance, and * * into the maps and guide-books, and other places where one looks for distinctive names, it is part of the geography of the country." Per Kekewich, J., In re Apollinaris Co.'s Trade-marks [1891] 2 Ch. 186, 203.

GERMAN.

Whole or entire, as respects genealogy or descent; thus, "brother german" denotes one who is brother both by the father's and mother's side; "cousins german," those in the first and nearest degree, i. e., children of brothers or sisters. Tech. Dict.; 4 Man. & G. 56.

GERMAN EDUCATION.

An education acquired through the use of the German language. Powell v. Board of Education, 97 Ill. 380.

GERMANE.

Literally, "germane" means "akin," "closely allied." It is only applicable to persons who are united to each other by the common tie of blood or marriage. When applied to inanimate things, it is, of course, used in a metaphorical sense, but still the idea of a common tie is always present. Thus, when properly applied to a legislative provision, the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs. Any provision not having this tendency, which introduces new subject matter into the act, is clearly obnoxious to the constitutional provision. It is an error to suppose that two things are, in a legal sense, germane to each other merely because there is a resemblance between them, or because they have some characteristics common to them both. One might, with just as much reason, contend that two persons are necessarily akin because they are of the same complexion, or in other particulars alike. Dolese et al. v. Pierce, 124 III. 147.

It has been repeatedly held by this court that the title is not required to contain all the details afterward set out in the act; that the title need not be an index of the contents of the act; that it need only set out the subject matter in a general form. People v. Hazelwood, 116 Ill. 319; People v. Commercial Life Ins. Co., 247 Ill. 92.

A provision which tends legitimately to accomplish the legislative purpose of the subject expressed in the title is properly included in the act. People v. McBride, 234 Ill. 146. To render a provision of the act void because not expressed in the title it must have no connection or rela-

tion therewith. People v. Sayer, 246 Ill. 382. All provisions which are incidental or auxiliary to or in any reasonable sense will promote the object as indicated in the title are legitimately included in the act. People v. Huff, 249 Ill. 164; Hoyne v. Ling, 264 Ill. 508.

Literally, "germane" means "alike," "closely allied," and when applied to amendatory legislation it signifies that the changes in the articles amended by implication are such as are calculated to promote the object and purpose sought to be accomplished by express amendment. Section 13 of article 4 of the constitution provides that "no act hereafter passed shall embrace more than one subject, and that shall be expressed in the title," and in construing this provision it has been held that the several provisions of an act of the General Assembly are germane to the subject expressed in its title if they relate to that subject, or in some reasonable way are connected therewith or are auxiliary to such subject or are incident thereto. In Boehm v. Hertz. 182 Ill. 154, on page 156, it is said: "The limitation of the above provisions of the constitution goes no further than to declare that no matters are properly included in the act which are not germane to its title. Where all the provisions of the act relate to a particular subject indicated in its title and are a part of or incident to it or in some reasonable sense connected with or auxiliary to the object in view, it cannot be held such provisions are not within the title of the act." And in Hudnall v. Ham, 172 Ill. 76, on page 83, it is said: "In determining whether the provision in question is embraced within the title of the act a liberal construction is to be given to the constitution, and unless the provision contains matter incongruous and having no proper connection or relation to the title it will not be void, as not embraced therein." City of Chicago v. Reeves, 220 III. 298, 299.

GERMANUS.

(Lat). Descended of the same stock, or from the same couple of ancestors; of

the whole or full blood. Mackeld. Civ. Law, § 145.

GET.

To "get" minerals (or to "get materials," s. 4, 5 & 6 W. 4, c. 50), it seems, synonymous with to "win" them. Ramsden v. Yeates, 50 L. J. M. C. 135; 6 Q. B. D. 583; 29 W. R. 628; 44 L. T. 612: Vh. Jowett v. Spencer, 17 L. J. Ex. 367; 1 Ex. 647.

GIFT.

A voluntary, gratuitous transfer of property by one to another. Martin v. Martin, 202 Ill. 388.

A voluntary, immediate and absolute transfer of property without consideration. Morey v. Wiley, 100 Ill. App. 78 (citing Eden v. Bohling, 69 Ill. App. 307).

A gift may be defined as a voluntary transfer of his property by one to another, without any consideration or compensation therefor. Gray v. Barton, 55 N. Y. 72.

Elements.

It is a necessary element of a gift that it be without consideration. Martin v. Martin, 202 Ill. 388.

Chancellor Kent's Classification.

There are two kinds of gifts: (1) gifts, simply so called, or gifts inter vivos, as they were distinguished in the civil law; (2) gifts causa mortis, or those made in the apprehension of death. Marsh v. Prentiss, 48 Ill. App. 83.

Revocability.

"A gift is always revocable until it is executed, and a promissory note, intended purely as a gift, is but a promise to make a gift in the future. The gift is not executed till the note is paid." Richardson v. Richardson, 148 Ill. 563, 572; Dacy v. Goll, 150 Ill. App. 13.

GIFT CAUSA MORTIS.

A gift by one who anticipates death as being near, made in view of his death

and to take effect by that event. Rosenthal v. People, 211 Ill. 309.

A gift causa mortis is defined to be a gift of personal property, made by a party in expectation of death then imminent, and upon an essential condition that the property shall belong fully to the donee in case the donor dies as anticipated, leaving the donee surviving him, and the gift is not in the meantime revoked, but not otherwise. 2 Schouler on Personal Property, section 135. Blackstone defines it to be a gift by a person in his last sickness apprehending his dissolution near. 2 Black. Comm. 514. According to Mr. Justice Story, there can be no valid donation mortis causa, 1, unless the gift be with a view to the donor's death; 2, unless it be conditional to take effect only on the donor's death by his existing disorder, or in his existing illness; and 3, unless there has been an actual delivery of the subject of the donation. 1 Story's Eq. Juris., section 607a. Roberts v. Draper, 18 Ill. App. 171. See also Wyblee v. McPeters, 52 Ind. 393; Baker v. Williams, 34 Ind. 547; Bostwick v. McHaffy, 46 Mich. 342; Virgin v. Gaither, 42 Ill. 39; Woodburn v. Woodburn, 123 Ill. 608; Reed v. Barnum, 36 Ill. App. 535.

A gift causa mortis may be defined as a gift of personal estate, made in prospect of death at no remote period, and which is dependent upon death occurring substantially as expected by the donor, and that the same be not revoked before death. It must be accompanied by delivery. 2 Kent's Com. 444; Redfield on Wills, Part 2, p. 297. Lutterell v. Caldwell, 31 Ill. App. 30.

A gift causa mortis is a gift of personal property made by a party in expectation of death, then imminent, upon the condition that the property shall belong to the donee in case the donor die as anticipated, leaving the donee surviving. It is not sufficient merely that the donor, being an old man, realizes that in the natural course of things he must soon die; but it is necessary to the validity of this kind of a gift that he at the time be stricken with some disorder that makes death imminent. 1 Story Eq. Jur., section 607; Willard Eq.

Jur. 554; Telford v. Patton, 144 Ill. 611; Williams v. Chamberlain, 165 Ill. 210; Taylor v. Harmison, 79 Ill. App. 38z.

Donatio mortis causa must be a completed and executed gift, the same as in the case of a gift inter vivos. If the gift does not take effect as an executed and completed transfer to the donee, either legal or equitable, during the life of the donor, it is a testamentary disposition, good only when made by a valid will. Basket v. Harrell, 197 U. S. 602; Comer v. Comer, 120 Ill. 420; Cline v. Jones, 111 Ill. 563; Walter v. Ford, 74 Mo. 195; McCord v. McCord, 77 Mo. 166; Gano v. Fisk, 43 Ohio St. 462. That is, the act or acts constituting the transaction must be consummated, and not remain incomplete or rest in mere intention,—and this is the rule whether the gift is by delivery, only, or by the creation of a trust. Marlin v. Funk, 75 N. Y. 134; McCord v. McCord, supra.

A gift causa mortis is a gift of personal property in expectation of death from a present disorder or peril. Fetter v. Irwin, 206 Ill. App. 518.

To constitute a valid gift inter vivos, possession and title must pass to and vest in the donee irrevocably. In this respect, alone, a gift causa mortis differs from that of a gift inter vivos, as in the case of the former it is revocable on the recovery of the donor. McCord v. McCord, supra; Walsh's Appeal, 122 Pa. St. 177. Therefore a proposed gift, to take effect only upon the death of the donor, being in its nature testamentary, will not be sustained as a gift causa mortis. Comer v. Comer, supra; Cline v. Jones, supra; Basket v. Harrell, supra; Walter v. Ford, supra; McCord v. McCord, supra. The donor must part with all control of the property in order to make a valid gift. If he reserves any right or title the gift will be incomplete. Barnes v. People, 25 Ill. App. 136; Hatch v. Atkinson, 52 Me. 346; Barnum v. Reed, 136 Ill. 398, 399.

Although a gift causa mortis is revocable by the donor upon his recovery, it must be in itself when made absolute, and not a delivery to a third person to return on recovery of the donor, and to make over to the donee only on the con-

tingency of his death. Bennett v. First Nat. Bank of Waterloo, 117 Ill. App. 398.

The requisites which are indispensable to constitute a valid gift mortis causa, 1. "That it be not only made in are: apprehension of present peril of death, but death must ensue without any perfect remission of the apprehended peril." 3 Redfield on Wills, 324. 2. "The gift, to operate as a good donatio mortis causa, must have been made to take effect only in the event of the donor's death, by his existing disorder." Ibid. 325. 3. "There must be an actual delivery of the chattel to the donee, so as to transfer the possession to him, but a delivery to a third person for the benefit of the donee will be sufficient, provided the donor part with all control over the subject of the gift. But so long as the donor retains control over it, the holder is regarded as his agent, and the direction to keep it for the donee will not amount to any present delivery sufficient to create a donatio mortis causa." Ibid. 326 and 330; 2 Kent, 444 star paging, et seq.: Williams v. Chamberlain, 165 Ill. 218; Barnes v. People, 25 Ill. App. 139.

GIFT INTER VIVOS.

A gift inter vivos is one made without the expectation of death as a moving cause, and to its validity it is necessary that the thing given to the donee be delivered, with such change of possession as to put it out of the power of the donor to repossess himself of it. To constitute a gift inter vivos it is essential that the gift take effect at once and completely. The donor must relinquish all present and future dominion over the subject-matter of the gift. If delivered to his agent to be subsequently delivered to the donee, he may at any time before the agent acts, revoke his authority. His death before delivery revokes it. ford v. Patton, 144 Ill. 611; Richardson v. Richardson, 148 Ill. 563; Taylor v. Harmison, 79 Ill. App. 382, 383; Trustees v. Hall, 48 Ill. App. 544.

To constitute a gift inter vivos, there must be a gift absolute and irrevocable, without any reference to its taking effect

at some future period. The donor must deliver the property and part with all present and future dominion over it. Dole v. Lincoln, 31 Maine 422; Northrup v. Hale, 73 Maine 66; Robinson v. Ring, 72 Maine 140; as said in Jackson v. Twenty-third St. Ry. Co., 88 N. Y. 520, "The delivery must be such as to vest the donee with the control and dominion over the property, and to absolutely divest the donor of his dominion and control, and the delivery must be made with the intent to vest the title of the property in the donee." Roberts Draper, 18 Ill. App. 170.

In order that a gift inter vivos be valid there must be an intention on the part of the giver, and a delivery of the gift to or for the donee in pursuance of such intent, and also an acceptance. An intention on the part of the donor that the gift shall go into immediate and absolute effect is essential. "The mere fact of a delivery and acceptance, or permission to take, followed by possession, is not, of itself, sufficient to establish a gift, as these may be equally consistent with a loan or sale. The intention of the parties, as well as the acts done, is necessary in determining the character of the transaction." (8 Am. and Eng. "The right to a Ency. of Law, 1336.) gift largely depends on the meaning and intention of the donor as gathered by all the circumstances of the case." (Ibid.) It was said, however, in Williams v. Forbes, 114 Ill. 171: "A gift is always revocable until it is executed, and a promissory note intended purely as a gift is but a promise to make a gift in the future. The gift is not executed until the note is paid." See, also, Kink v. Fink, 18 Johns. 145; Richardson v. Richardson, 148 Ill. 569, 570, 572.

To constitute a valid gift inter vivos, possession and title must pass to and vest in the donee, or in a trustee for the donee. If anything remains to be done to complete the gift, what so remains to be done cannot be enforced, as it is based upon no consideration; and when the gift is thus incomplete, there is a locus poenitentiae, and the gift may be revoked. Where the alleged gift is of a legal estate

capable of legal conveyance, and no conveyance is made, the gift is revocable. Barnum v. Reed, 136 Ill. 388; Wadhams v. Gay, 73 Ill. 415; 8 Am. & Eng. Ency. of Law, pp. 1313-1318; Telford v. Patton, 144 Ill. 611. A gift inter vivos cannot be made to take effect in possession in futuro; nor will equity interpose to perfect a defective gift or voluntary settlement made without consideration; nor can equity convert an imperfect gift into a declaration of trust merely on account of that imperfection. Young v. Young, 80 N. Y. 422; McCartney v. Ridgway, 160 Ill. 156.

Delivery of the subject matter of a gift inter vivos is necessary to the validity of such a gift. Words of gift are not sufficient, but there must be an actual and positive change of possession. Delivery to the agent of the donor, to be by such agent delivered to the donee, is not effectual if the donor dies before the agent has carried out his instructions, as the death of the principal revokes the authority of the agent. But if the donor delivers the property to an agent of the donee and parts with the possession and all right of control over the property, and the agent is invested with actual possession thereof, the gift becomes complete though the donee does not himself have the manual possession of the property. The possession of the agent is the possession of the principal—the donee. nings v. Neville, 180 Ill. 277.

It is essential to a donation inter vivos that the gift be absolute and irrevocable: that the giver part with all present and future dominion over the property given; that the gift go into effect at once and not at some future time; that there be a delivery of the thing given to the donee; that there be "such a change of possession as to put it out of the power of the giver to repossess himself of the thing given." Telford v. Patton, 144 Ill. 620, and cases cited therein; Felter v. Irwin, 206 Ill. App. 518. The delivery must be made with the intent to vest the title in the donee. Williams v. Chamberlain, 165 Ill. 210. Millard v. Millard, 123 Ill. App. 278; Shafer v. Manning, 132 Ill.

App. 573; Rone v. Robinson, 188 Ill. App. 441

To constitute a gift inter vivos the rule is universal that everything necessary to a complete transfer of the title of the donor must have been made. Volunteers have, as against a mere donor, no equity. So long as a gift is incomplete there is a locus poenitentiae. Wadhams v. Gay, 73 Ill. 415-432. A court of equity will, at the suit of volunteers, enforce trusts created for their benefit, but it will not complete imperfect gifts, or compel specific performance of promises made without consideration. Lewin on Trusts, 69-75; Jones v. Lock, 1 Ch. App. 28; Vaizey on Settlements, Vol. 1, 92; Adams' Equity, 80. Ridgway v. McCartney, 57 Ill. App. 467.

GIFT TO A CLASS.

"A gift to a class is defined by Mr. Jarman as a gift of an aggregate sum to a body of persons uncertain in number at the time of the gift, to be ascertained at a future time, and who are all to take in equal or in some other definite proportions, the share of each being dependent for its amount upon the ultimate number of persons." In re King's Estate, 200 N. Y. 189; 93 N. E. Rep. 484. "Whether a devise or a bequest is to a class or to the individuals constituting the class distributively, depends upon the language of the will. If from such language it appears that the number of persons who are to take and the amounts of their shares are uncertain until the devise or bequest takes effect, the beneficiaries will generally be held to take as a class; but where at the time of making the gift the number of beneficiaries is certain, and the share each is to receive is also certain and in no way dependent for its amount upon the number who shall survive, it is not a gift to a class but to the individuals distributively; and this is generally held to be the case where the beneficiaries are named and their shares are certain." 40 Cyc. 1473. The language of a will must disclose an intention to create a class, otherwise the beneficiaries will take distributively. In re Russell, 168 N. Y. 169; 61 N. E. Rep. 166; Volunteers of America v. Pierce, 267 Ill. 414, 415.

GIFTOMAN.

In Swedish law. He who has a right to dispose of a woman in marriage. This right is vested in the father, if living; if dead, in the mother. They may nominate a person in their place; but for want of such nomination the brothers german, and for want of them the consanguine brothers, and in default of the latter the uterine brothers, have the right; but they are bound to consult the paternal or maternal grandfather. Swed. Code, "Marriage," c. 1.

GILL.

A measure of capacity, equal to onefourth of a pint.

GIRTH.

A girth, or yard, is a measure of Saxon origin, taken from the circumference of the human body. Girth is contracted from girdeth, and signifies as much as girdle.

GIST OF AN ACTION.

See also Malice.

The cause for which an action will lie; the ground or foundation of a suit, and without which it would not be maintainable; the essential ground or object of a suit, without which it is not a cause of action. Jernberg v. Mix, 199 Ill. 256; Kitson v. Farwell, 132 Ill. 338; First Nat. Bank of Flora v. Burkett, 101 Ill. 394; Lasher v. Carey, 182 Ill. App. 152; Sankstone v. People, 175 Ill. App. 659; Ettinger v. Norton, 131 Ill. App. 525; Petition of Mansfield, 120 Ill. App. 513; Penoyer v. People, 105 Ill. App. 482; Beckman v. Menge, 82 Ill. App. 230.

GIVE.

Will.

The term "give," as used in a will, is one of the largest possible signification,

applicable to real as well as personal property. Rickman v. Meier, 213 Ill. 521.

As Used in Dram-Shop act.

The offense of selling liquor to a minor is distinct from that of giving such liquor to a minor; and a count in an indictment for the one will not be sustained by proof of the other. Siegel v. The People, 106 III. 94.

GIVE AND BEQUEATH.

See Devise.

Imports a benefit in point of right, to take effect upon the decease of the testator and proof of the will, unless it is made in terms to depend upon some contingency or condition precedent. Dale v. White, 33 Conn. 297.

GIVE. BEQUEATH AND DISPOSE OF.

At common law the language, "I give, bequeath and dispose of" would pass but a life estate. Under section 14, chapter 30, of our statute, it is sufficient to convey the fee simple title "if a less estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law." Lomax v. Shinn, 162 Ill. 127.

GIVEN.

"Given," as a participle, is doubtful in its tense,-it may refer to the past or the future; as in a guarantee made "in consideration of the credit given by A. to B.," on which Pollock, C. B., and Martin, B. (diss. Bramwell, B.), decided that there was a good consideration stated, because "given" referred to future credit (Broom v. Batchelor, 25 L. J. Ex. 299; 1 H. & N. 255). Pollock, C. B. said,--"the word 'given' is indefinite in point of time. It is, no doubt, a perfect participle; but it may mean perfect past, perfect present, or perfect future:" and he seems to have thought the latter its prima facie mean-On the otner hand, Bramwell, B., said,—" 'given' is a participle, and, prima | ney, A. R. 4 C. P. 714.

facie, it must have its primary meaning, namely, 'already given'."

Instruction.

Instructions are "given" when they are spoken or read to the jury. Daube v. Kuppenheimer, 195 Ill. App. 104.

The action of the trial court, after reading an instruction marked "given" to the jury, in stating orally that he wished to modify the instruction and would not give it, is not prejudicial, where the instruction is afterwards withdrawn by the court and marked "refused," thus saving the right of review. C. & E. I. R. R. Co. v. Zapp, 209 Ill. 341.

GIVEN PURSUANT TO THE CON-VEYANCE.

Possession of a homestead estate is "given pursuant to the conveyance," within the meaning of section 4 of the Exemption Act, relating to deeds of a homestead estate not subscribed and acknowledged by a wife, when such possession is given by reason or on account of the conveyance having been made, and not by reason or on account of some other circumstance, without regard to the length of time or circumstances intervening between the execution of the deed and the change of possession. Coon v. Wilson, 222 Ill. 637; Phillips v. Gannon, 246 Ill. 108.

GIVING.

See Furnishing.

GIVING OF CREDIT.

The depositing of goods with an auctioneer with an authority to sell them and receive the proceeds subject to the depositor's approval is a giving of credit within the meaning of a statute providing that where there have been mutual credits between a debtor who afterwards becomes bankrupt and any of his creditors an acount shall be taken with a view to set-off. Palmer v. Day, [1895] 2 Q. B. 618, citing Naoroji v. Chartered Bank of India, L. R. 3 C. P. 444; Ashley v. Gur-

GLANVILLE.

The author of the oldest treatise on English law, written in Latin, about A. D. 1181, under the title of Tractatus de Legibus et Consuetudinibus Angliæ: (A Treatise of the Laws and Customs of England.) The older writers are generally agreed that this was Ranulphus de Glanvilla, chief justitiary of England, to Henry II, who was equally eminent as a soldier and a judge, and died at the seige of Acre, in 1190. Hoveden in Hen. II, Staunf. Prær. c. 1, fol. 5. Catlin, C. J. Plowden, 368 a. Cowell. 8 Co. pref. Crabb's Hist. Eng. Law, 70. The same opinion is adopted by Spelman and Sir Matthew Hale. Hist. Com. Law, c. 7. Lord Coke gives the arms and genealogy of Glanville, and speaks with the greatest confidence on the subject. 8 Co. ub. sup. Mr. Reeves, however, doubts the identity of these individuals, and thinks that the Glanville who wrote the treatise might have been a person of that name who was a justice itinerant. 1 Reeves' Hist. Eng. Law, 223.

As to the work itself, there is little doubt of its being the most ancient treatise on English law. Spelman remarks that Glanville was the first who attempted to make that law a lex scripta, or written But it possesses a higher interest even than this, from the fact of its being the oldest work of the kind in Europe. Dr. Robertson observes that it was the first undertaking in any country in Europe, to collect into one body the customs which then regulated the administration of justice, and thus to render the law fixed. 1 Robertson's Charles V. Appendix, Note xxv. Defontaines, the oldest law writer in France, composed his Conseil about half a century afterwards.

GLEANING.

The act of gathering such grain in a field where it grew as may have been left by the reapers after the sheaves were gathered. There is a custom in England, it is said, by which the poor are allowed to enter and glean upon another's land after harvest, without being guilty of a trespass. 3 Bl. Comm. 212. But it has | means the dirt and refuse from the mine.

been decided that the community are not entitled to claim this privilege as a right. 1 H. Bl. 51. In the United States, it is believed, no such right exists. It seems to have existed in some parts of France. Merlin, Repert. "Glanage." As to whether gleaning would or would not amount to larceny, see Woodf. Landl. & Ten. 242; 2 Russ. Crimes, 99. The Jewish law may be found in the 19th chapter of Leviticus. verses 9 and 10. See Ruth ii. 2, 3; Isaiah xvii, 6.

GLOUCESTER, STATUTE OF.

An English statute, passed 6 Edw. I. A. D. 1278. So called because it was passed at Gloucester. There were other statutes made at Gloucester which do not bear this name. See St. 2 Rich. II.

GO.

"Go" means "to move, pass, proceed." In re Hitchins' estate, 89 N. Y. Suppl. 476.

GO AND BELONG TO.

"Go to and belong to" have the same meaning as the words "pay and divide." In re Hitchins' estate, 89 N. Y. Suppl. 476.

GO IN EVIDENCE.

Stipulation.

A stipulation that certain documents shall "go in evidence" is tantamount to saying that they shall be considered in evidence, and not merely that they may be read in evidence. Protection, etc., Co. v. Palmer, 81 Ill. 91.

GOAL.

A game played without any instrument, depending on speed and skill alone. Tatman v. Strader, 23 Ill. 440.

GOB.

Mining Expression.

The term "gob," as used in mining,

Colesar v. Star, etc., Co., 160 III. App. 254.

GOD AND MY COUNTRY.

When a prisoner is arraigned, he is asked, "How will you be tried?" He answers, "By God and my country." This practice arose when the prisoner had the right to choose the mode of trial, namely, by ordeal or by jury, and then he elected by God or by this country, that is, by jury. It is probable that originally it was "By God or my country;" for the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. 1 Chit. Crim. Law, 416; Barr. Obs. St. 73, note.

GOING OFF LARGE.

Having the wind free on either tack, properly termed a vessel "off large," because it is in her power to take a course to either side—starboard or larboard—proceed straight forward on her course, or return back to her anchorage, or to the point from which she started. In other language she is free to the wind. Fashion v. Wards, 6 McLean (U. S. C. C.) 170.

GOLD.

"Gold," s. 1, 30 & 31 V. c. 90, does not mean pure gold, but merely what in common parlance is called gold. Young v. Cook, 47 L. J. M. C. 28; 3 Ex. D. 101.

GOLD MINE.

"Suppose * * *, that with the gold ore * * *, some copper, iron, or lead is found, but merely in such trivial quantities as not to be worth working, * * * the existence of these metals under such circumstances would not make the mine a copper, iron, or lead mine, or bring its proprietor among the class of persons intended to be benefited by the Acts" protecting the subject in the working of such mines from the interference of the prerogative of the Crown over Royal mines; "the mine would be called a gold * *

mine and nothing else." Per North, J., Attorney-General v. Morgan [1891] 1 Ch. 432.

GOOD AND INDEFEASIBLE ESTATE IN FEE SIMPLE.

A deed made by a county of a tract of swamp land, containing the following language: "There is granted to * * * the following described lands, * * * to have and to hold the said tract to the said grantee, and to his heirs and assigns forever, as a good and indefeasible estate in fee simple." This was not a warranty deed, and it contained no covenants of warranty, express or implied. Wheeler v. Wayne, 132 Ill. 604.

GOOD AND REASONABLY SAFE.

An instruction requiring a city to use reasonable care to keep its sidewalks in "good and reasonably safe condition" is not prejudicial because of the use of the word "good," where several instructions for each party announce the correct rule, and where the city, in one of its own instructions, uses the word "sound and sufficient" with respect to the sidewalks. City of Aledo v. Honeyman, 208 Ill. 417.

GOOD AND SATISFACTORY BOND.

Where a contract provides for "a good and satisfactory bond," it will be assumed that the parties to whom the bond is to be given shall have the right to determine, within reasonable limits, what the amount of the bond shall be. Barnes v. Ludington, 51 Ill. App. 96.

GOOD AND SUFFICIENT CONDITION.

The requirement of section 1 of the Jails and Jailors Act that there shall be kept "in good and sufficient condition and repair" a common jail, etc., is not complied with when such jail is permitted to remain filthy, offensive, or unhealthy, the words "good condition" referring not only to security, but to its sanitary condition, and capacity to make prisoners

comfortable. Stuart v. La Salle County, 83 Ill. 346.

GOOD AND SUFFICIENT CAUSE.

Section 21 of our Practice Act (J. & A. ¶ 8558) gives the court the right and power to advance and try a cause out of its regular order for "good and sufficient cause." What is good and sufficient cause within the meaning of that section is a question for the trial court, and the trial court's decision in that regard will not be interfered with by the reviewing court unless there has been a clear abuse of his discretion. Spitzer v. Schlatt, 249 Ill. 420; Staunton Coal Co. v. Menk, 197 Ill. 369; White v. Herhold, 182 Ill. App. 480.

GOOD AND SUFFICIENT CON-VEYANCE.

A "good and sufficient conveyance" implies a clean title assured by proper covenants. Curtis Land & Loan Co. v. Interior L. Co., 137 Wis. 341.

GOOD AND SUFFICIENT DEED.

One who does not contract for a title of record, may be required to accept one not of record, if "good" enough. Page v. Greeley, 75 Ill. 400. How good that must be can hardly be stated more favorably to the purchaser than was done in Brown v. Cannon, 5 Gilm. 180-4, where the principal authorities on that side are referred to and the rule announced that it must be free from reasonable doubt. A title by limitation, however, is there recognized as capable of meeting this requirement; for though such may be in general "doubtful and uncertain," even in a high degree, yet in a given case, where the prior record title is shown to have been in one against whom the statute under which adverse possession becomes available has run, it is in law and fact as firm as a deed could make it. Seymour v. DeLancey, Hopkins' Ch. R. (N. Y.) 436; Strober v. Dutton, 6 Phila. (Pa.) 185. A title that is good to a moral certainty—which is tantamount to being free from any reasonable doubt-is all that can in such

case be required. Parks v. Laroche, 15 Ill. App. 357.

Does not mean merely a conveyance good in point of form. That would be a covenant without substance. But it means an operative conveyance; one that carries with it a good and sufficient title to the lands to be conveyed. Clute v. Robinson, 2 John. (N. Y.) 613.

The words "good and sufficient" * * * denote only the species of deed to be given, and have no reference to the title to be conveyed. Gazley v. Price, 16 John. (N. Y.) 269.

A good deed means a good deed, not a good title. Barrow v. Bispham, 6 Halst. (N. J.) 119.

In common parlance, to give a "good and sufficient deed" means to give a good and sufficient title. Cooper v. Cooper, 56 N. J. Eq. 55.

GOOD AND SUFFICIENT FENCE.

A fence is "good and sufficient," within the meaning of section 20 of the Fences Act (J. & A. ¶ 5720), one which will turn stock which is to some extent unruly, and not merely one which will turn ordinary stock. Chicago & A. R. Co. v. Utley, 38 Ill. 413; Albright v. Bruner, 14 Ill. App. 322.

A fence is "good and sufficient," within the meaning of Rev. St. 1845, § 15, now section 20 of the Fences Act (J. & A. ¶ 5720), if it will prevent the breaking in of stock not breachy. Scott v. Wirshing, 64 Ill. 106; Scott v. Buck, 85 Ill. 334; Leggett v. I. C. R. R. Co., 72 Ill. App. 581.

GOOD BEHAVIOR.

Conduct authorized by law. United States v. Hrasky, 240 Ill. 564.

GOOD CAUSE.

Adjournment of Sheriff's Sale.

The discretion to adjourn a sale possessed by a sheriff at common law, or for "good cause" under our statute, is a legal discretion justified by the exigency of the situation,—not the exercise of an arbi-

trary preference as to the course the officer will pursue. The execution plaintiff had the right to control the writ, in the absence of a sufficient legal reason for postponing the sale. Gilbert v. Watts-Degolyer Co., 169 Ill. 135.

Dissolution of Corporation.

The "good cause shown to dissolve or close up the business of a corporation and to appoint a receiver therefor," as mentioned in the statute, signifies a legal cause, such a one as the sovereign authority might by law resume the franchise granted. Wheeler v. Pullman I. and S. Co., 143 Ill. 205; Hunt v. The Le-Grand R. S. R. Co., 143 Ill. 118; Heitkamp v. American Pigment & Chemical Co., 158 Ill. App. 590.

GOOD CAUSE OF ACTION.

If, a person have a legal right to sue, he must necessarily have a "good" (using that word, as it obviously is always used in this connection, in the sense of "legally sufficient,") "cause of action." If he have no legal right to sue, he has not merely a bad cause of action, but no cause of action. So, "good cause of action" can mean no more than "cause of action" and the word "good," in that connection, is hence clearly superfluous. Parker v. Enslow, 102 Ill. 276, 277.

GOOD CHARACTER.

See also Character.

"In discussing a former United States statute which had the identical provisions as to good character, the United States circuit court, in In re Spenser, 5 Sawyer, 195, said (p. 196): "The applicant must not simply have sustained a good reputation, but his conduct must have been such as comports with a good character. In other words, he must have behaved—conducted himself—as a man of good moral character ordinarily would, should or does. Character consists of the qualities which constitute the individual; reputation the sum of opinions entertained concerning him. The former is interior; the

latter external. The one is the substance; the other the shadow.' See, also, Words and Phrases, 1061, 1063.

"We concur in the view that the word 'character,' as used in this statute, is not synonymous with 'reputation;' that what it is here intended to mean is what the person really is. Good behavior is defined to be conduct authorized by law; bad behavior such as the law punishes. (Bouvier's Law Dict.; 2 Blackstone's Com. book 4, 251, 256.) The phrase 'during good behavior' is defined by the Standard Dictionary as 'while conducting oneself conformably to law.' Anderson's Law Dictionary defines behavior as 'the bearing with respect to propriety, morals and the requirements of law.' 'Good moral character,' within the meaning of this statute, may not be easy to determine in all cases and under all circumstances. The standard doubtless will vary from one generation to another. In discussing this question in In re Spenser, supra, the court said (p. 198): 'It may be said that an alien who has otherwise behaved as a man of good moral character during a residence in the country of at least five years ought not to be denied admission to citizenship on account of the commission, in that time, of a single illegal or immoral act. This suggestion is based upon the idea that it is sufficient if the behavior of the applicant was generally good, -that the good preponderated over the evil. In some sense this may be correct. For instance, the law of the State prohibits gaming and the unlicensed sale of spirituous liquors. These acts thereby become immoral. But their criminality consists in their being prohibited and not because they are deemed to be intrinsically wrong-mala in se. Now, if an applicant for naturalization whose behavior during a period of five or more years was otherwise good was shown to have committed during that time either of those or similar crimes, I am not prepared to say that his application ought to be denied on account of his behavior: and yet it is clear that anything like habitual gaming or vending of liquors under such circumstances would constitute bad behavior—and be a bar, under the statute, to admission to

citizenship." United States v. Hrasky, 240 Ill. 564, 565.

A certificate that an applicant for a license is of "good character" is not false because he is cohabiting with a woman without being married to her (Leader v. Yell, 33 L. J. M. C. 231; 16 C. B. N. S. 584). In that case Erle, J., said: "'Character' must mean the estimation in which a man is held by those who are acquainted with him. You cannot pry into the secrets of a man's conduct; if you could do so, there might be many circumstances which would palliate the cohabitation."

An habitual violator of the laws, even the laws which are only mala prohibita instead of mala in se, is not within the meaning of the statute [Sandels & Hill's Digest, § 4869] requiring the applicant to be of "good moral character." Whissen v. Furth, 73 Ark. 371.

GOOD COMMON SCHOOL EDUCA-TION.

The "good common school education" which the legislature is compelled to provide for, through our system of common schools, is not limited to the primary or intermediate grades but may be extended to include a high school education. The high school for more advanced education is as much a part of our system of free public schools as the district school, in which only the lower grades are taught. Cook v. Board of Directors, 266 Ill. 168.

GOOD CONDITION.

The question as to what is "good condition" of a demised premises, is "to be viewed with regard to the class of tenement to which the demised one belongs." Per Fry, J., Saner v. Bilton, 47 L. J. Ch. 270; 7 Ch. D. 815.

GOOD CURRENT MONEY.

There is nothing in legal contemplation "good current money," but the coin of the constitution, or foreign coins, made current by act of congress, unless there is evidence giving to those terms a local signification. Moore v. Morris, 20 Ill. 259.

GOOD EVEN SURFACE.

A contract for constructing a railroad with a "good even surface" does not include filling in between the ties. Snell v. Cottingham, 72 Ill. 167.

GOOD EXCUSE.

The words "good excuse," can only mean "legal excuse," and "legal excuse" presents a question of law. Austine v. The People, 110 Ill. 254.

GOOD FAITH.

Defined in General.

The opposite of fraud or bad faith. Hardin v. Gouveneur, 69 Ill. 143.

Honest, lawful intent; the condition of acting without knowledge of fraud, and without intent to assist in a fraudulent or otherwise unlawful scheme. Crouch v. First, etc., Bank, 156 Ill. 357.

The words "good faith," as used in the Limitation Act, must receive a practical, common sense construction. The statute was intended to protect a purchaser of land who bought and paid his money under the belief that he was acquiring title. This is the construction it has heretofore received, and it is undoubtedly correct. Woodward v. Blanchard, 16 Ill. 424; Rawson v. Fox, 65 Ill. 200.

The fact that a purchaser may err in judgment, or do an act that another, under like circumstances, might not do, is not enough to impeach the good faith of the transaction. Where the purchase is made with an honest purpose, although the real title is not acquired, the good faith can not be questioned. Winters v. Haines, 84 Ill. 588.

What is meant by quitting in good faith, is a proposition of easy solution. Good faith is the opposite of bad faith, and here it is proper to remark that good faith is presumed until the contrary is proven. McConnel v. Street, 17 Ill. 253; Morrison v. Kelly, 22 Ill. 626. Wilmington Coal Mining and Mfg. Co. v. Barr, 2 Ill. App. 88.

"Good faith, in relation to the colorable title, must mean nothing more nor less than that the party honestly believed his title good, although upon investigation it proves otherwise." Stark v. Starr, 1 Sawy. 25.

"Good faith in this connection [a chattel mortgage act providing that every mortgage unaccompanied by immediate delivery and actual and continued change of possession shall be void as against creditors and subsequent purchasers and mortgagees in good faith of] means actual reliance upon the ownership of the vendor or mortgagor because without notice of the encumbrance." Milton v. Boyd, 49 N. J. Eq. 154 citing Metropolis Nat. Bank v. Sprague, 6 C. E. Gr. 536.

Claim of Title.

The expression "good faith," used in section 6 of the Limitations Act (J. & A. ¶ 7201), relating to possession of land under claim and color of title, means freedom from a design to defraud the person having the better title. McCagg v. Heacock, 34 Ill. 479; Duck Island Club v. Bexstead, 174 Ill. 435; Keeney v. Glos, 258 Ill. 557.

The words "good faith" are doubtless used in their popular sense, and relate to the actually existing state of the mind, whether so from ignorance, skepticism, sophistry, illusion, fanaticism or imbecility, and without regard to what it should be from given legal standards of law or reason. Claim of title in good faith is claiming under the sincere belief to be the owner of the premises. faith required in the acquisition of color of title is a freedom from a design to defraud the person having a better title. Davis v. Hall, 92 Ill. 90; Woodward v. Blanchard, 16 Ill. 432. Good faith, within the meaning of the statute, is the opposite of fraud and of bad faith, and its nonexistence, as in all other cases where fraud is imputed, must be established by Good faith is always presumed till the contrary is shown, and he who alleges bad faith assumes the burden of proving it. Stubblefield v. Borders, 92 Ill. 285; McConnel v. Street, 17 Ill. 254.

Knowledge of Adverse Claims.

"The doctrine is, that bad faith, as contradistinguished from good faith, in the Limitation Act, is not established by showing actual notice of existing claims or liens of other persons to the property, or by showing a knowledge on the part of the holder of the color of title of legal defects which prevent the color of title from being an absolute one. Where there is no actual fraud, and no proof showing that the color of title was acquired in bad faith, which means in or by fraud, this court will hold it was acquired in good faith." McCagg et al. v. Heacock et al., 42 Ill. 157; Rawson v. Fox, 65 Ill. 200; McCagg et al. v. Heacock et al., 34 Ill. 476; Russell v. Mandell, 73 Ill. 137; Coleman v. Billings et al., 89 Ill. 191.

"Knowledge of adverse claims or defects in the title is not acquired in bad faith. McConnel v. Street, 17 Ill. 253; Stubblefield v. Borders, 92 Ill. 279. Good faith in the acquirement of title, within the meaning of the statute, does not require ignorance of adverse claims or defects in the title. Notice, actual or constructive, is of no consequence. Chickering v. Failes, 26 Ill. 507; Dickenson v. Breeden, 30 Ill. 279; McCagg v. Heacock, 34 Ill. 476; Coleman v. Billings, 89 Ill. 183; Piatt County v. Goodell, 97 Ill. 84. There may be good faith notwithstanding actual notice of existing claims or liens, or knowledge of legal defects which prevent the title, of which there is color, from being absolute. McCagg v. Heacock, supra; Brian v. Melton, 125 Ill. 647." Coward v. Coward, 148 Ill. 268; Keppel v. Dreier, 187 Ill. 298; Dawson v. Edwards, 189 Ill. 60; Richards v. Carter, 201 Ill. 165; Peters v. Dicus, 254 Ill. 384.

GOOD FOR ONE FIRST CLASS PASSAGE.

The words "good for one first class passage" appearing upon a railroad ticket do not constitute a contract by the selling company to transport the holder over connecting roads so as to make it liable for the refusal of such roads to honor the tickets. Chicago & A. R. Co. v. Mulford, 162 Ill. 531.

GOOD GROUNDS OF DEFENCE.

"By the expression 'good grounds,' I mean not merely grounds available as a

defence in a court of law, but grounds affording a moral justification for the defence." In re Blackhurst, 3 De G. & J. 42.

GOOD HEALTH.

The expression "good health," as used in life insurance policies, does not mean absolute perfection, but is a comparative expression, and if the person enjoys such health as to justify a reasonable belief by himself or others, that he is free from organic trouble, or from symptoms calculated to cause a reasonable apprehension of such derangement, and if to ordinary observers and to outward appearance his health is reasonably such that he might, with ordinary safety, be insured, and upon the ordinary terms, the requirement of "good health" is satisfied. Johnson v. Modern Woodmen, 160 Ill. App. 42.

An instruction that the words "good health," when applied to a human being, mean that the person said to be in good health is in a reasonably good state of health, and that he is free from any disease or illness that tends seriously or permanently to weaken or impair the constitution, gives a reasonable definition to the term "good health." Court of Honor v. Dinger, 221 Ill. 181; Brown v. Metropolitan Life Insurance Company, 65 Mich. 306; Manhattan Life Insurance Company v. Gardner, 82 Fed. Rep. 989; Clover v. Modern Woodmen of America, 142 Ill. App. 280.

The words "good health" in the rules of a fraternal insurance society with reference to reinstatement of a member mean that a person is in a reasonably good state of health and free from any disease or illness that tends seriously or permanently to weaken or impair the constitution, and do not refer to the appearance of good health. Trafton v. National Council, Knights and Ladies of Security, 198 Ill. App. 345.

"Good health means that he had no grave, important, or serious disease,

* * It means a state of health free from any disease or ailment that affects the general soundness and healthfulness of the system seriously, and not a mere indisposition, which does not tend to

weaken or undermine the constitution of the assured." Hann v. National Union, 97 Mich. 519 quoting the charge of the trial judge and affirming it.

GOOD MERCHANTABLE AB-STRACT OF TITLE.

Contract to Convey Land.

A contract by which a vendor agreed to convey to the vendee land "in fee simple, clear of all incumbrances whatever," and to deliver to the vendee a "good merchantable abstract of title," means, by the last quoted expression, an abstract showing that vendors had the kind of title they agreed to convey. Geithman v. Eichler, 265 Ill. 584.

GOOD MORAL CHARACTER.

See Good Character.

GOOD STANDING.

See also In Good Standing.

"A member is said to be in good standing when he complies with the laws, rules, usages and regulations of the order. Such compliance necessarily includes punctual payment of all dues and assessments, for which the member may become liable. Good standing also means good conduct, that is, freedom from the violation of those requirements, which indicate the benevolent purposes of the society, or express its intention to insist upon a high standard of character among its members. Independent Order of Foresters v. Zak, 136 Ill. 185; Royal Templars of Temperance v. Curd, 111 Ill. 284. The words of the certificate here sued upon as follows: 'Provided always that said member is in good standing in this order at the time of said death.' In relation to words of a similar kind, we said, in Independent Order of Foresters v. Zak, supra: 'Under such a constitution as that of appellant, the loss of good standing must be shown by some official action on the part of the organization. The order is a corporate body. The attitude of a corporate body towards one of its members can only be known through its action as such corporate body. The only proper evidence of such action will be the records or proceedings of the organization itself.' It is clear that, inasmuch as loss of good standing on the part of a member must be thus established by corporate action, such loss of good standing does not include the act of the member in committing suicide." Royal Circle v. Achterrath, 204 Ill. 564.

Good standing in a fraternal society not only implies that a party is a member of the society, but that he has a good reputation therein. Royal Templars of Temperance v. Curd, 111 Ill. 289.

GOOD TITLE.

The rule of law, then, undoubtedly is, that a purchaser who bargained for a good title, shall not be compelled to take one which is subject to suspicion. does not mean that the title shall be good beyond a possible peradventure, for then he might never be satisfied, but that it must be free from reasonable doubt. It must be such a title to which no reasonable man would object; such an one as a prudent man would not hesitate to invest his own money upon, at a full market price; such an one as will bring, in the market, as high a price with as without the objection. When we force a title upon a party, we must feel an assurance that it can not be taken from him. It is not sufficient that the title is probably good, but we must feel a reasonable certainty that it is so. Brown v. Cannon, 10 Ill. 182.

Compliance with a covenant to convey by a good and sufficient warranty deed, a good title to the land requires the conveyance of a title free from incumbrances. Thompson v. Shoemaker, 68 Ill. 256; Morgan v. Smith, 11 Ill. 194; Brown v. Cannon, 5 Gilm. 174; Carpenter v. Bailey, 17 Wend. 244. A right of dower is an incumbrance, within the terms of that covenant, and it is immaterial whether that right of dower is inchoate or consummate. Russ v. Perry, 49 N. H. 547; Carter v. Denam's Exrs., 3 Zabr. 260; Porter v. Noyer, 2 Greenl. 22; Jones v.

Gardner, 10 J. R. 266; Prescott v. Trueman, 4 Mass. 627; Walker's Admr. v. Deaver, 79 Mo. 664; Bigelow v. Hubbard, 97 Mass. 195; Shearer v. Ranger, 22 Pick. 447; McCord v. Massey, 155 Ill. 125.

"Good Title," in a contract for sale of realty, means such a title as will be forced on a purchaser in an action for specific performance, and as would be an answer to an action of ejectment by any claimant. Jeakes v. White, 21 L. J. Ex. 265; 6 Ex. 873.

A title to be good should be free from litigation, palpable defects, and grave doubts, should consist of both legal and equitable title, and should be fairly deducible of record. Reynolds v. Borel, 86 Cal. 542, quoting Turner v. McDonald, 76 Cal. 180.

The words good title import that the owner has the title, legal and equitable, to all the land, and the words defective title, meaning that the party claiming to own has not the whole title, but some other person has title to a part or portion of the land. Bates v. Howard, 105 Cal. 184, quoting Copertini v. Oppermann, 76 Cal. 186.

GOOD WILL.

The Supreme Court of this State, in the case of Farwell et al. v. Huling, 132 Ill. 119, gives the following definition of good will:

"The good will of a partnership may be defined as every possible advantage acquired by the firm in carrying on its business, whether connected with premises, or name, or other matter." Glen & Hall Mfg. Co. v. Hall, 61 N. Y. 230.

In 2 Lindley on Partnership,* 439, the author says:

"The term good will can hardly be said to have any precise signification. It is generally used to denote the benefit arising from connection and reputation; and its value is what can be got for the chance of being able to keep that connection and improve it. Upon the sale of an established business, its good will has a marketable value, whether the business is that of a professional man or of any other person."

In Mechem's Elements of Part., section 87, the author quotes part of the above language from Mr. Lindley, and also the definition of good will as given in Story on Part., and further gives the definition of good will by Lord Eldon, viz., "The good will of a trade is nothing more than the probability that the old customers will resort to the old place," and says that this definition is approved by Mr. Parsons in his work on partnership.

In Story on Part., section 99 (7th Ed.), the author says:

"Good will may be properly enough described to be the advantage or benefit which is acquired by an establishment beyond the mere value of the capital, stock, funds or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity, or reputation for skill or affluence or punctuality or from other accidental circumstances or necessities, or even from ancient partialities or prejudices." Smith v. Gibbs, 44 N. H. 343.

The author then proceeds to discuss different instances of the good will of different kinds of partnerships, and says further:

"It seems that good will can constitute a part of the partnership effects or interests only in cases of mere commercial business or trades, and not in cases of professional business, which is almost necessarily connected with personal skill and confidence in the particular partner."

In Parsons on Part. (3d Ed.), 286, the author says, in speaking of good will and the difficulty of giving a definition thereof, that a distinction has been taken between the interest of a partnership resting on the contracts of the firm with a third party and that which has no such foundation; but the author expresses a doubt as to whether this distinction rests on good authority or good reason. The same author, in this connection, says that the definition of good will above quoted from Lord Eldon, "is an exact statement of the legal meaning of good will." The same author also says that a distinction has

been taken between "the good will of a partnership in trade and that of a professional partnership. Lawyers or physicians may become partners; but the good will attached to such a firm must be considered more as a personal than as a local thing. It is not a probability that the old customers will go to the old place, but to the same persons, wherever they may be."

In 1 Collyer on Part., section 117, the author recognizes the same distinction that Mr. Parsons does as to good will resting on contracts of the firm with a third party and that which has no such foundation, and says that founded on special contract "is a commodity on which a valuation may be fixed," but as to the other class, no definite allowance can be made for it in case of the death of one partner, except in connection with the premises where the business was conducted, and the stock in trade. This, the author says, applies solely to a mercantile business. He further says:

"In a business of a professional nature, as that of an attorney or apothecary, the good will attaches to the person, rather than to any other subject. Such part of it as is not personal is so small that equity will not regard it as matter of sale, even where the partnership is without articles. It seems clear, therefore, that upon the death of one partner the good will in these cases will survive to the survivor."

In 2 Bates on Part., section 668, the author says:

"Good will is not strictly applicable to a professional partnership, for its business has no local existence, but is entirely personal, consisting in a confidence in the integrity and ability of the individual." Douthart v. Logan, 86 Ill. App. 309, 310, 311.

The good-will of a trade consists merely in the probability that the old customers will continue their patronage of the old place. Branco v. A. C. O'Laughlin Co., 209 Ill. App. 476; Critwell v. Lye, 17 Vesey 346.

There must be some material advantages to create a "good will" in any business. The mere fact that other partners are willing to continue the business does not give evidence that any good will attaches thereto. Farwell et al. v. Huling, 132 Ill. 112.

"'Goodwill,' I apprehend," said Wood V. C. in Churton v. Douglas (Joh. 174, 188) "must mean every advantage—every positive advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself-that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business." The learned Vice-Chancellor pointed out in this connection that it would be absurd to say that when a large wholesale business is conducted the public are mindful whether it is carried on in Fleet Street or in The Strand.

The question, what is meant by "goodwill," is, no doubt, a critical one. Sir George Jessel, discussing in Ginesi v. Cooper (14 Ch. D. 596) the language of Wood V. C. which I have just quoted, said: "Attracting customers to the business is a matter connected with the carrying of it on." It is the connection thus formed, together with the circumstances. whether of habit or otherwise, which tend to make it permanent, that constitutes the goodwill of a business. It is this which constitutes the difference between a business just started, which has no goodwill attached to it, and one which has acquired a goodwill. The former trader has to seek out his customers from among the community as best he can. The latter has a custom ready made. He knows what members of the community are purchasers of the articles in which he deals, and are not attached by custom to any other establishment. Lord Herschell in Trego v. Hunt, [1896] A. C. 17.

"The favor which the management of a business has won from the public, and the probability that old customers will continue their patronage." Williams v. Farrand, 88 Mich. 477 (1891) quoting Chittenden v. Witbeck, 50 Mich. 401.

GOODS AND EFFECTS.

See Effects.

GOODS.

Bailment.

The word "goods," within the definition of a bailment, includes every article of movable or tangible property. McCaffrey v. Knapp, etc., Co., 74 Ill. App. 85.

The word "goods," as a technical term of the law, is nomen generalissimum, and has a very extensive meaning. In a will, where there is nothing to restrain its operation, it includes all the personal estate of the testator. In a strict sense, as the word is understood in penal statutes, it is limited to movables belonging to the property of some person, which have an intrinsic value, and does not include securities, which are not valuable in themselves, but merely represent value. Keyser v. School District, 35 N. Hamp. 483.

The question, * * *, is whether horses and cattle were goods within the meaning of the section [23 of the Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80) which provides that if any ship carries as deck cargo timber stores or other goods, the tonnage of the space occupied by such goods shall be added to the ship's registered tonnage and dues paid on the whole]. I can see no reason to doubt that they were. * * I am of opinion that the language of § 23 is apt to include such a cargo as horses and cattle." Lord Russell, C. J. in Richmond etc. Steamship Co. v. Trinity House, [1896] 1 Q. B. 497.

A dog may be regarded as "goods" within the meaning of a statute giving a magistrate jurisdiction of complaints for detention, at suit of any person claiming to be entitled to "the property or possession of any goods," etc. Reg. v. Slade, 21 Q. B. D. 433.

Shares are "goods" within the meaning of a rule by which the court has power to sell goods in a pending action. Evans v. Davies [1893] 2 Ch. 216.

Certificates of railway stock are not "goods" within the Factors Act, 5 & 6 V. c. 39. Freeman v. Appleyard, 32 L. J. Ex. 175.

GOODS AND CHATTELS.

Scope of Expression.

The expression "goods and chattels" is a term of very extensive meaning, and is often used to designate personal property of every kind, intangible as well as tangible, as distinguished from real property, and is frequently used in a more limited sense, the precise import depending upon the subject matter and the context. Davis v. Hincke, 264 Ill. 51.

These words are synonymous. A bequest of all testator's "goods and chattels" "doth pass all his estate, active and passive (except land of inheritance and freehold estates and such things as depend thereon,) as leases for years, gold, silver, plate, household stuff, cattle, corn, debts and the like; and if one devise to J. S. all his 'goods' or his 'chattels,' by either of these is devised as much as by both of them" (Touch, 447). But in such a connection as a bequest of "furniture, goods and chattels," the latter words would pass only such things as are ejusdem generis with "furniture," and would not include jewellery, guns, tricycles and scientific instruments (Manton v. Tabois, 54 L. J. Ch. 1008; 30 Ch. D. 92), still less a sum of money (Gibbs v. Lawrence, 30 L. J. Ch. 170; Lamphier v. Despard, 2 Dr. & War. 59: Timewell v. Perkins, 2 Atk. 103: Roberts v. Kuffin, Ib. 113: Smart v. Bute, 11 Ves. 656). Growing crops, as between exor and heir, or between the exor and remainder-man, and in most other respects, are looked upon as "chattels." Wms, Exs. 713-715; but see Brantom v. Griffits, 45 L. J. C. P. 592.

But on the other hand whilst a grant, by deed inter vivos, of all one's "goods and chattels" comprises generally speaking such property as would pass by a similar bequest (Touch. 97); yet such a grant does not comprise leases for years (Portman v. Willis, Cro. Eliz. 386; and see Harrison v. Blackburn, 34 L. J. C. P. 109; 17 C. B. N. S. 678, qualifying Ringer v. Cann, 7 L. J. Ex. 108; 3 M. & W. 343); nor Choses in Action (Touch. 98: Add. T. 422: but would this be so, now that

Choses in Action are assignable; "nor things of pleasure, such as hawks, hounds, &c." (Add. T. 422). This last negative is possibly founded, though not so stated, on the dictum at p. 98, Touch.; but Termes de la Ley (Catals) says, that hawks and hounds are not accounted "catals," "for they are feræ naturæ."

Equally under deed or will, "goods and chattels" would pass property whether held in severalty or in common (Touch. 98).

Though the Touchstone says that "debts" pass by a bequest of "goods and chattels," yet see Hertford v. Lowther, 7 Bea. 1; 13 L. J. Ch. 41, and cases cited in the judgment. "Choses in Action were held to be included in the expression 'goods and chattels' in all the Bankruptcy Acts from the time of James I. downwards," (per Lindley, L. J., Colonial Bank v. Whinney, 55 L. J. Ch. 590, a statement not affected by the reversal of the judgment in that case by the H. L. 56 Ib. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705); but the same expression in 13 Eliz. c. 5, s. 1, did not include choses in action. Dundas v. Dutens, 1 Ves. jun. 196.

A newspaper has been held to be within "goods and chattels" in a Bankruptcy Act (Re Baldwin, Ex p. Foss, 27 L. J. Bank. 17); so of a trade mark. Ex p. Young, Sebastian, Tr. Mark Ca. 537.

"Goods and chattels," 13 Eliz. c. 5, "are words of very extensive signification, and undoubtedly comprise both property tangible, and property which is not tangible." Per Turner, L. J., Re Baldwin, 27 L. J. Bank. 22; 2 D. G. & J. 230.

"By the Common Law, no estate of inheritance or freehold is comprehended under these words bona or catalla." Co. Litt. 118 b.

Frauds and Perjuries Act.

Section 7 of the Frauds and Perjuries Act, relating to pretended loans of "goods and chattels," refers, by the quoted expression, to visible and tangible articles of personal property of which actual possession may be had and delivered, and does not include choses in action incapable of delivery, promissory notes or other

evidences of indebtedness, or to money, the loan of which passes the title to the particular pieces and creates an indebtedness. Davis v. Hincke, 264 Ill. 50.

Choses in Action.

"The term 'goods and chattels' includes choses in action. 1 Atkins, 182. term 'chattels' is more comprehensive than the term 'goods,' and will include animate as well as inanimate property, slaves, horses, cattle, etc., being chattels, but goods will not include as that term is understood. Every movable thing which can be weighed, measured or counted, is included under the general term 'chattels,' which Lord Coke says is a French word, signifying goods. Blackstone says the term is, in truth, derived from the technical Latin word catalla, which primarily signified only beasts of husbandry, or, as we still call them cattle, but, in its secondary sense, was applied to all movables in general. 2 Com. 385. We may remark here, that in the English statute of limitations (21 James I, chapter 5) this phraseology is used, as regards the action of replevin: 'goods and cattle' and not as in our modern statutes, goods and chattels. Chattels personal, are animals, household stuff, money, jewels, corn, garments, and everything else that can properly be put in motion and transferred from place to place. 2 Blackstone's Com. 387." Chicago and Aurora Railroad Co. v. Thompson, 19 Ill. 584.

"Money, goods or chattels," Ord. 57, R. 1, R. S. C., authorising Interpleader Issue, includes, in "chattels," choses in action, e.g., shares (Robinson v. Jenkins, 34 S. J. 210; 6 Times Rep. 158). "In an indictment bills of exchange or promissory notes ought not in strict propriety to be described as 'chattels.' But for almost all purposes, they are comprehended under the general word 'goods and chattels,' or either of them, and as such are forfeitable to the crown, and may be the subject of reputed ownership or fraudulent transfer." Byles, 4, and cases there cited.

Slave.

A slave is within the meaning of the words "goods and chattels," as used in the act of 1825 providing that "all and singular the goods and chattels, lands and tenements and real estate" of a judgment debtor shall be subject to be taken on execution. Nance v. Howard, 1 Ill. 246.

Personal Property in Possession.

The expression "goods and chattels," used in the act of 1825 providing that "all and singular the goods and chattels, lands and tenements and real estate" of a judgment debtor shall be liable to be sold on execution, means personal property in possession. Nance v. Howard, 1 Ill. 243.

Judgments and Decrees Act.

The words "goods and chattels," used in the Judgments and Decrees Act, as descriptive of property which may be taken on execution, includes only such tangible property as may be seized and may be present at the sale. Crawford v. Schmitz, 139 Ill. 569.

By our statutes, executions, whether issued from a court of record or by a justice of the peace, run against the goods and chattels of the judgment debtor, and these words are held to include only tangible property which may be seized and which may be present at the sale. Crawford v. Schmitz, 139 Ill. 569.

Revenue Act.

The word "personal property," employed in section 254, and the words "goods and chattels," in section 137 of the Revenue Act, are to be construed as having the same meaning and as comprehending every species of personalty which may, under the statute, be made the subject of levy and sale under an execution issued upon a judgment at law. Loeber v. Leininger, 175 Ill. 487.

GOODS AND MERCHANDISE.

In the business of commerce, the phrases "goods and merchandise" have been long understood as designating only commodities bought and sold by merchants and traders. Chamberlain v. Trans. Co., 45 Barb. (N. Y.) 223.

GOODS, CHATTELS AND PROP-ERTY.

Release.

A release of title and claim to "goods, chattels and property" located at a named place and obtained under a certain option, which included certain machinery, does not include a claim for labor performed in setting up such machinery. Andree v. Sheehan, 194 Ill. App. 589.

GOODS, WARES AND MERCHAN-DISE.

Scope of Term.

A phrase used in the statute of frauds, covering, generally, all classes of personal property. Fixtures do not come within it. 3 Tyrwh. 959; 1 Tyrwh. & G. 4. Growing crops of potatoes, corn, turnips, and other annual crops, are within it. 8 Dowl. & R. 314; 10 Barn. & C. 446; 4 Mees. & W. 347. Per contra, 2 Taunt. 38. See Add. Cont. 31, 32; 2 Dana (Ky.) 206; 2 Rawle (Pa.) 161; 5 Barn. & C. 829; 10 Adol. & E. 753. See, generally, 118 Mass. 285; 20 Mich. 357.

When the substance of a contract is a chattel or chattels to be sold and delivered by one party to the other, the subject matter is within "goods, wares and merchandizes" as used in s. 17, Stat. of Frauds (Atkinson v. Bell, 8 B. & C. 277: Lee v. Griffin, 30 L. J. Q. B. 252; 1 B. & S. 272). Therefore a contract to supply a properly fitting set of artificial teeth is within the phrase, for "there can hardly be said to be more skill in fitting teeth than in fitting a pair of breeches" (per Crompton, J., Lee v. Griffin, sup.). But if the substance of the contract be work and labour,-e.g., an artist painting a picture, a solicitor preparing a deed, or a printer printing a book, or an engineer making plans and models for an intended patent—then the subject matter is not within this phrase (Clay v. Yates, 25 L. J. Ex. 237; 1 H. & N. 73: Lee v. Griffin, sup.: Grafton v. Armitage, 15 L. J. C. P. 20; 2 C. B. 336). So again though fixtures are not within the phrase (Hallen v. Runder, 3 L. J. Ex. 260; 1 Cr. M. & R. 266: Lee v. Gaskell, 45 L. J. Q. B. 540; 1 Q. B. D. 700); yet "timber and growing crops are so, because the clear intention being that they shall be severed, they are taken, by a fiction of law, as being actually severed" (per Cockburn, C. J., Lee v. Gaskell, sup., referring to Smith v. Surman, 9 B. & C. 561: Parker v. Staniland, 11 East, 362: Mayfield v. Wadsley, 3 B. & C. 357; Vf. Rosc. N. P. 285). A fortiori trees felled, are within the phrase, Acraman v. Morrice, 19 L. J. C. P. 57; 8 C. B. 449.

Choses in action are not within this phrase (Benj. Part ii. Ch. ii.: per Denman, C. J., Humble v. Mitchell, 9 L. J. Q. B. 30); therefore neither shares in a jointstock company (Humble v. Mitchell, 9 L. J. Q. B. 29; 11 A. & E. 205), or in a canal company (Latham v. Barber, 6 T. R. 76), or in a railway (Bowlby v. Bell, 16 L. J. C. P. 18; 3 C. B. 284), or in a mining company (Watson v. Spratley, 24 L. J. Ex. 53; 10 Ex. 222) are included therein; nor are the bonds or certificates of foreign stock (Heseltine v. Siggers, 18 L. J. Ex. 166; 1 Ex. 856), or the certificates of ordinary stock or shares. Freeman v. Appleyard, 32 L. J. Ex. 175.

Shares are not "goods, wares or merchandize," within the exemption of agreements from Stamp duty. Knight v. Barber, 16 L. J. Ex. 18; 16 M. & W. 66.

The words "goods, wares and merchandise," in the sixth section of the statute of Frauds are equivalent to the term "personal property," and are intended to include whatever is not embraced by the phrase "lands, tenements are hereditaments" in the preceding section. Greenwood v. Law, 55 N. J. Law, 176.

"Debts due to a person are certainly not goods, wares, or merchandise. The latter words occur in the statute of frauds (Pub. sts. c. 78, § 5) and though it is held that shares in corporations are goods, wares and merchandise within the meaning of that statute, it is said that 'the words of the statute have never yet been extended • beyond securities which are subjects of common sale and barter, and which have a visible and palpable form.' Somerby v. Buntin, 118 Mass. 279, 285. There is no reason why a wider meaning should be given to them when applied to taxable property. It is said in Boston Investment Co. v. Boston, 158 Mass. 461,

463, that 'it is not contended, and it could not successfully be contended, that money, in bank, is "goods, wares, merchandise," or "stock in trade," within the meaning of the first clause of § 20 of C. 11 of the Public Statutes.' If money in bank does not constitute stock in trade, clearly debts due one do not. The language of the statute is 'all goods, wares, merchandise, and other stock in trade,' etc., and we think it apparent from the connection and the rest of the clauses that by stock in trade is meant the visible and tangible property with which the trade or business of the owner is carried on, and to which it relates." New York Biscuit Co. v. Cambridge, 161 Mass., 326, citing Hittenger v. Westford, 135 Mass. 258, 260.

Ordinance.

An ordinance defining a broker as one who is engaged, inter alia, in selling "goods, wares and merchandise" on commission includes, by the quoted phrase, shares in the capital stock of incorporated companies, and other securities which are the subject of common barter and sale, and which are given visible and palpable form by means of certificates, bonds, and other evidences of indebtedness. Banta v. Chicago, 172 Ill. 218.

GOVERNMENT.

Government, in this State, is reposed in three departments composed of separate bodies of magistracy. The whole legislative power is vested by the constitution in the General Assembly, composed of two houses, the members of each have certain qualifications and to be elected by the people. Every subject within the domain of legislation and within the scope of civil government not withdrawn from it by the constitution of the State, or of the United States, can be dealt with by that body by general laws to affect the whole State and all the people within it. That body is, emphatically, the guardian of the public interests and welfare, and would be derelict in its duty did it fail to exercise all its powers to their promotion and protection. That body is the sole judge of such measures as may advance the interests of the people. Munn v. People, 69 Ill. 88.

"From our nature and environments,

government is a supreme necessity, and never a choice. It is imperatively demanded, and is indispensable to the protection of life, property, and such liberty as the government accords to the governed. All persons hold their rights subject to the necessities of the general public. Those are the terms upon which all hold their rights to protection. It is forcibly expressed by the maxim, "salus populi est suprema lex." Government must be armed with all necessary power to protect the governed, nor can that, the great primary object of all governments, be defeated, except by overpowering force. Neither can the legislature confer power or exemptions on natural or artificial persons that will defeat the great purpose of the organization of government. It is the inherent and inalienable right of all persons in our government to equal protection from wrong, injustice and oppression, and so long as they are worthy of citizenship the people will maintain that right, in one mode or another. They may be deprived of the right for a time, but never permanently. The people will never sanction a doctrine so unjust, so unequal, and so monstrous, that the legislature may sell exemptions from governmental restraint, whether to natural or artificial persons." W., St. L. & P. Ry. Co. v. People, 105 Ill. 245-246.

Government in a political sense, signifies that form of fundamental rules by which the members of a body politic regulate their social action, and the administration of public affairs, according to esablished constitutions, laws and usages. Winspear v. Township of Holman, 37 Iowa 544.

Nature, theory and forms.

The Romans compared the state to a vessel, and applied the term gubernator, helmsman, to the leader or actual ruler of a state. From the Latin, this word has passed into most of the modern European languages. That institution or aggregate of institutions by which a state makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming a state.

We understand, in modern political science, by "state," in its widest sense, an independent society, acknowledging no superior, and by the term "government," that institution or aggregate of institutions by which that society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them. Government is the aggregate of authorities which rule a society. By "administration," again, we understand in modern times, and especially in more or less free countries, the aggregate of those persons in whose hands the reins of government are for the time being,-the chief ministers or heads of departments. But the terms "state," "government," and "administration" are not always used in their strictness. The government of a state being its most prominent feature, which is most readily perceived, "government" has frequently been used for "state;" and the publicists of the last century almost always used the term "government," or "form of government," when they discussed the different political societies or states. On the other hand, "government" is often used, to this day, for "administration," in the sense in which it has been explained.

They are never actually created by agreement or compact. Even where portions of government are formed by agreement, as, for instance, when a certain family is called to rule over a country, the contracting parties must previously be conscious of having authority to do so. As society originates with the family, so does authority or government. Nowhere do men exist without authority among them, even though it were but in its mere incipiency. Men are forced into this state of things by the fundamental law that with them, and with them alone of all mammals, the period of dependence of the young upon its parents outlasts by many years the period of lactation, so that, during this period of post-lactational dependence, time and opportunity are given for the development of affection and the habit of obedience on the one hand, and of affec-

tion and authority on the other, as well as of mutual dependence. The family is a society, and expands into clusters of families, into tribes and larger societies, collecting into communities, always carrying the habit and necessity of authority and mutual support along with them. men advance, the great and pervading law of mutual dependence shows itself more and more clearly, and acts more and more intensely. Man is eminently a social being, not only as to an instinctive love of aggregation, not only as to material necessity and security, but also as to mental and affectional development, and not only as to a given number of existing beings, or what we will call as to "extent." but also as to "descent" of generation after generation, or, as we may call it, "transmission." Society, and its government along with it, are continuous. Government exists and continues among men, and laws have authority for generations which neither made them, nor had any direct representation in making them, because the necessity of governmentnecessary according to the nature of social man and to his wants-is a continuous necessity. But the family is not only the institution from which once, at a distant period, society, authority, and government arose. The family increases in importance, distinctness, and intensity of action as man advances, and continues to develop authority, obedience, affection, and social adhesiveness, and thus acts with reference to the state as the feeder acts with reference to the canal. state originates daily anew in the family.

Although man is an eminently social being, he is also individual, morally, intellectually, and physically; and, while his individuality will endure even beyond this life, he is necessitated, by his physical condition, to appropriate and to produce, and thus to imprint his individuality upon the material world around, to create property. But man is not only an appropriating and producing, he is also an exchanging, being. He always exchanges and always intercommunicates. This constant intertwining of man's individualism and socialism creates mutual claims of protection, rights, the necessity of rules, of laws,—

in one word, as individuals and as natural members of society, men produce and require government. No society, no cluster of men, no individuals banded together even for a temporary purpose, can exist without some sort of government instantly springing up. Government is natural to man, and characteristic. No animals have a government; no authority exists among them; instinct and physical submission alone exist among them. Man alone has laws which ought to be obeyed, but may be disobeyed. Expansion, accumulation, development, progress, relapses, disintegration, violence, error, superstition, the necessity of intercommunication, wealth and poverty, peculiar disposition, temperament, configuration of the country, traditional types, pride and avarice, knowledge and ignorance, sagacity of individuals, taste, activity and sluggishness. noble or criminal bias, position, both geographical and chronological,-all that affects numbers of men affects their governments, and an endless variety of governments and political societies has been the consequence; but, whatever form of government may present itself to us, the fundamental idea, however rudely conceived, is always the protection of society and its members, security of property and person, the administration of justice therefor, and the united efforts of society to furnish the means to authority to carry out its objects,---contribution, which, viewed as imposed by authority, is taxation. Those bands of robbers which occasionally have risen in disintegrating societies, as in India, and who merely robbed and devastated, avowing that they did not mean to administer justice or protect the people, form no exception, although the extent of their soldiery, and the periodicity of their raids, caused them to be called governments. What little of government continued to exist was still the remnant of the communal government of the oppressed hamlets; while the robbers themselves could not exist without a government among themselves.

Aristotle classified governments according to the seat of supreme power, and he has been generally followed down to very recent times. Accordingly, we had mon-

archy, that government in which the supreme power is vested in one man, to which was added, at a later period, the idea of hereditariness. Aristocracy, the government, in which the supreme power is vested in the aristoi, which does not mean, in this case, the best, but the excelling ones, the prominent, i. e., by property and influence. Privilege is its characteristic. Its corresponding degenerate government is the oligarchy (from oligos, little, few), that government in which supreme power is exercised by a few privileged ones, who generally have arrogated the power. Democracy, that government in which supreme power is vested in the people at large. Equality is one of its characteristics. Its degenerate correspondent is the ochlocracy (from ochlos, the rabble), for which at present the barbarous term "mobocracy" is frequently used.

But this classification was insufficient, even at the time of Aristotle, when, for instance, theocracies existed; nor is the seat of supreme power the only characteristic, nor, in all respects, by any means the chief characteristic. A royal government, for instance, may be less absolute than a republican government. In order to group together the governments and political societies which have existed, and are still existing, with philosophical discrimination, we must pay attention to the chief power holder (whether he be one or whether there are many), to the pervading spirit of the administration or wielding of the power, to the characteristics of the society, or the influencing interests of the same, to the limitation or entirety of public power, to the peculiar relations of the citizen to the state. Indeed, every principle, relation, or condition characteristically influencing or shaping society or government in particular may furnish us with a proper division. We propose, then, the following:

Grouping of Political Societies and Governments.

 According to the supreme power holder, or the placing of supreme power, whether really or nominally so.
 The power holder may be one, a few,

- many, or all; and we have, accordingly:
 - A. Principalities, that is, states the rulers of which are set apart from the ruled, or inherently differ from the ruled, as in the case of the theocracy.
 - (1) Monarchy.
 - (a) Patriarchy.
 - (b) Chieftain government (as our Indians).
 - (c) Sacerdotal monarchy (as states of the church; former sovereign bishoprics).
 - (d) Kingdom, or principality proper.
 - (e) Theocracy (Jehovah was the chief magistrate of Israelitic state).
 - (2) Dyarchy. It exists in Siam, and existed occasionally in the Roman empire; not in Sparta, because Sparta was a republic, although her two hereditary generals were called kings.
 - B. Republic.
 - (1) Aristocracy.
 - (a) Aristocracy proper.
 - (aa) Aristocracies which are democracies within the body of aristocrats (as the former Polish government).
 - (bb) Organic internal government (as Venice formerly).
 - (b) Oligarchy.
 - (c) Sacerdotal republic, or hierarchy.
 - (d) Plutocracy; if, indeed, we adopt this term from antiquity for a government in which it is the principle that the possessors of great wealth constitute the body of aristocrats.
 - (2) Democracy.
 - (a) Democracy proper.
 - (b) Ochlocracy (mob rule), "mob" meaning unorganized multitude.

- According to the unity of public power, or its division and limitation.
 - A. Unrestricted power, or absolutism.
 - (1) According to the form of government.
 - (a) Absolute monarchy, or despotism.
 - (b) Absolute aristocracy (Venice); absolute sacerdotal aristocracy, etc.
 - (c) Absolute democracy (the government of the Agora, or market democracy).
 - (2) According to the organization of the administration.
 - (a) Centralized absolutism. Centralism, called "bureaucracy" when carried on by writing; at least, bureaucracy has very rarely existed, if ever, without centralism.
 - (b) Provincial (satraps, pashas, proconsuls).
 - B. According to division of public power.
 - (1) Governments in which the three great functions of public power are separate, viz., the legislative, executive, judiciary. If a distinct term contradistinguished to centralism be wanted, we might call these "co-operative governments."
 - (2) Governments in which these branches are not strictly separate, as, for instance, in our government, but which are nevertheless not centralized governments; as Republican Rome, Athens, and several modern kingdoms.
 - C. Institutional government.
 - Institutional government comprehending the whole, or constitutional government.
 - (a) Deputative government.

- (b) Representative government.
 - (aa) Bicameral.
 - (bb) Unicameral.
- (2) Local self-government. See V.

 We do not believe that any substantial self-government can exist without an institutional character and subordinate self-governments. It can exist only under an institutional government (see Lieber's Civil Liberty and Self-Government, under "Institution").
- D. Whether the state is the substantive or the means, or whether the principle of socialism or individualism preponderates.
 - (1) Socialism, that state of society in which the socialist principle prevails, or in which government considers itself the substantive; the ancient states absorbing the individual or making citizenship the highest phase of humanity; absolutism of Louis XIV. Indeed, all modern absolutism is socialistic.
 - (2) Individualism, that system in which the state remains acknowledged a means, and the individual the substantive; where primary claims, that is, rights, are felt to exist, for the obtaining and protection of which the government is established,--the government, or even society, which must not attempt to absorb the individual. The individual is immortal, and will be of another world; the state is neither.
- III. According to the descent or transfer of supreme power.
 - A. Hereditary governments.

 Monarchies.

 Aristocracies.

 Hierarchies, etc.

- B. Elective.

 Monarchies.

 Aristocracies.
 - Hierarchies.
- C. Hereditary elective governments, the rulers of which are chosen from a certain family or tribe.
- D. Governments in which the chief magIstrate or monarch has the right to appoint the successor; as occasionally the Roman emperors, the Chinese, the Russian, in theory, Bonaparte when consul for life.
- IV. According to the origin of supreme power, real or theoretical.
 - A. According to the primordial character of power.
 - (1) Based on jus divinum.
 - (a) Monarchies.
 - (b) Communism, which rests its claims on a jus divinum or extrapolitical claim of society.
 - (c) Democracies, when proclaiming that the people, because the people, can do what they list, even against the law; as the Athenians once declared it, and Napoleon III., when he desired to be elected president a second time against the constitution.
 - (2) Based on the sovereignty of the people.
 - (a) Establishing an institutional government, as with us.
 - (b) Establishing absolutism (the Bonaparte sovereignty).
 - B. Delegated power.
 - (1) Chartered governments.
 - (a) Chartered city governments.
 - (b) Chartered companies, as the former great East India Company.

- (c) Proprietary governments.
- (2) Vice royalties; as Egypt, and, formerly, Algiers.
- (3) Colonial government with constitution and high amount of self-government,—a government of great importance in modern history.
- V. Constitutions. (To avoid too many subdivisions, this subject has been treated here separately. See II.)

Constitutions, the fundamental laws on which governments rest, and which determine the relation in which the citizen stands to the government, as well as each portion of the government to the whole, and which, therefore, give feature to the political society, may be:

- A. As to their origin.
 - Accumulative; as the constitutions of England or Republican Rome.
 - (2) Enacted constitutions (generally, but not philosophically, called "written constitutions").
 - (a) Octroyed constitutions
 (as the French, by
 Louis XVIII).
 - (b) Enacted by the people, as our constitutions. ("We, the people, charter governments; formerly governments chartered the liberties of the people.")
 - (3) Pacts between two parties, contracts, as Magna Charta, and most charters in the Middle Ages. The medieval rule was that as much freedom was enjoyed as it was possible to conquer,—expugnare in the true sense.
- B. As to extent or uniformity.
 - Broadcast over the land. We may call them national constitutions, popular constitutions, constitutions for the whole state.

- (2) Special charters. Chartered, accumulated and varying franchises, medieval character. (See article "Constitution" in the Encyclopedia Americana.)
- VI. As to the extent and comprehension of the chief government.
 - A. Military governments.
 - (1) Commercial government; one of the first in Asia, and that into which Asiatic society relapses, as the only remaining element, when barbarous conquerors destroy all bonds which can be torn by them.
 - (2) Tribal government.
 - (a) Stationary.
 - (b) Nomadic. We mention
 the nomadic government under the tribal
 government, because
 no other government
 has been nomadic, except the patriarchal
 government, which indeed is the incipiency
 of the tribal government.
 - (3) City government; that is, city states; as all free states of antiquity, and as the Hanseatic governments in modern times.
 - (4) Government of the Medieval
 Orders extending over portions of societies far apart;
 as the Templars, Teutonic
 Knights, Knights of St.
 John. Political societies
 without necessary territory, although they had
 always landed property.
 - (5) National states; that is, populous political societies spreading over an extensive and cohesive territory beyond the limits of a city.
 - B. Confederacies.
 - (1) As to admission of members, or extension.

- (a) Closed, as the Amphictyonic council, Germany.
- (b) Open, as ours.
- (2) As to the federal character, or the character of the members, as states.
 - (a) Leagues.
 - (aa) Tribal confederacies; frequently observed in Asia; generally of a loose character.
 - (bb) City leagues, as the Hanseatic League, the Lombard League.
 - (cc) Congress of deputies, voting by states and according to instruction; as the Netherlands republic and our Articles of Confederation, Germanic Confederation.
 - (dd) Present "state system of Europe" (with constant congresses, if we may call this "system," a federative government in its incipiency).
 - (b) Confederacies proper, with national congress.
 - (aa) With ecclesiae or democratic congress (Achaean League).
 - (bb) With representative national congress, as ours.
- C. Mere agglomerations of one ruler.
 - (1) As the early Asiatic monarchies, or Turkey.
 - (2) Several crowns in one head; as Austria, Sweden, Denmark.
- VII. As to the construction of society, the title of property and allegiance.
 - A. As to the classes of society.
 - Castes, hereditarily dividing the whole population, according to occupations and privileges. India, ancient Egypt.

- (2) Special castes.
 - (a) Government with privileged classes or caste; nobility.
 - (b) Government with degraded or oppressed caste; slavery.
 - (c) Governments founded on equality of citizens (the uniform tendency of modern civilization).
- B. As to property and production.
 - (1) Communism.
 - (2) Individualism.
- C. As to allegiance.
 - (1) Plain, direct; as in unitary governments.
 - (2) Varied; as in national confederacies.
 - (3) Graduated or encapsulated; as in the feudal system, or as is the case with the serf.
- D. Governments are occasionally called according to the prevailing interests or classes; as Military states; for instance, Prussia under Frederick II.

 Maritime state.

Commercial.
Agricultural.
Manufacturing.
Ecclesiastical, etc.

- VIII. According to simplicity or complexity, as in all other spheres. we have—
 - A. Simple governments (formerly called "pure;" as "pure democracy").
 - B. Complex governments, formerly called "mixed."

GRADE.

An ordinance providing that the roadway of streets shall be graded, need not specifically state that the low places of the street shall be filled and the high places cut down, as the word "grade" naturally includes such action. McChesney v. Chicago, 201 Ill. 348.

GRAIN.

"Grain—1. A single, small seed; a kernel, especially of those plants, like wheat, whose seed are used for food. 2. The fruit of certain grasses which furnish the chief food of man or beast." Coen v. The Denver Mut. F. Ins. Co., 155 Ill. App. 336.

The twenty-fourth part of a pennyweight. For scientific purposes the grain only is used, and sets of weights are constructed in decimal progression, from ten thousand grains to one-hundredth of a grain.

GRAMME.

A French weight. The gramme is the weight of a cubic centimetre of distilled water at the temperature of zero. It is equal to 15.4441 grains troy, or 5.6481 drachms avoirdupois.

GRAND ASSIZE.

An extraordinary trial by jury, instituted by Henry II., by way of alternative offered to the choice of the tenant or defendant in a writ of right, instead of the barbarous custom of trial by battel. For this purpose, a writ de magna assiza eliganda was directed to the sheriff to return four knights, who were to choose twelve other knights to be joined with themselves; and these sixteen formed the grand assize, or great jury, to try the right between the parties. 3 Bl. Comm. 351.

GRAND COUTUMIER.

Two collections of laws bore this title. One, also called the "Coutumier of France," is a collection of the customs, usages, and forms of practice which had been used from time immemorial in France; the other, called the "Coutumier de Normandie" (which, indeed, with some alterations, made a part of the former), was composed about the fourteenth of Henry III., A. D. 1229, and is a collection of the Norman laws, not as they stood at the conquest of England by William the Conqueror, but some time afterwards.

and contains many provisions probably borrowed from the old English or Saxon laws. Hale, Hist. Com. Law, c. 6.

GRAND JURY.

In practice. A body of men, consisting of not less than twelve nor more than twenty-four, respectively returned by the sheriff of every county to every session of the peace, oyer and terminer, and general gaol delivery, to whom indictments are preferred. 4 Bl. Comm. 302; 1 Chit. Crim. Law, 310, 311.

There is reason to believe that this institution existed among the Saxons. Crabb. Hist. Eng. Law, 35. By the constitutions of Clarendon, enacted 10 Hen. II. (A. D. 1164), it is provided that, "if such men were suspected whom none wished or dared to accuse, the sheriff, being thereto required by the bishop, should swear twelve men of the neighborhood, or village, to declare the truth" respecting such supposed crime, the jurors being summoned as witnesses or accusers, rather than judges. It seems to be pretty certain that this statute either established grand juries, if this institution did not exist before, or recognized them if they already existed. 1 Spence, Eq. Jur. 63.

"The grand jury constitutes a part of the court, and their official acts in finding true bills or ignoring bills are borne on the records of the court, and witnesses sworn before that body are sworn in open court, though not necessarily in the presence of the judge." Boone v. People, 148 Ill. 448.

Grand jury is a lawful body, empowered to hear and investigate charges of a criminal nature against persons within their proper county. Perselly v. Bacon, 20 Mo. 336.

GRAND LARCENY.

Larceny of the higher grade as fixed by the value of the goods stolen. Kelly v. People, 132 Ill. 368.

GRAND STAND.

Tiers of wooden seats rising one above the other are "grand stands" within the meaning of section 656 of the Municipal Code of Chicago, regulating the location of such stands, although such stands are constructed on the roof of a brick building. Amsterdam v. Chicago, 160 Ill. App. 113.

GRANDCHILDREN.

The children of one's children. Sometimes these may claim bequests given in a will to children, though, in general, they can make no such claim. 6 Coke, 16.

"Grandchildren is a word of large extent, and, in common parlance, takes in everybody descended from the testator, and will have that effect, unless the intention appears to the contrary." Lord Henley, C., Hussey v. Dillon (1762), Ambl. 604.

A grand-child by marriage is not within the word. Hussey v. Berkley, 2 Eden 196.

Children of step-child are not grand-children. Cutter v. Doughty, 7 Hill 305; reversing judgment of sup. court in 23 Wend. 513; construed to another point in 8 Paige, ch. 375.

When used in a will as descriptive of beneficiaries, and it is evident that the testator intended to include great grand-children such intention will be executed by courts. Hussey v. Berkeley, 2 Eden 194; s. c. Ambler, 603; Pemberton v. Parke, 5 Binn. 601.

Great grandchildren are not grandchildren. Oxford v. Churchill, 3 Ves. & B. 59; Williams on Exrs., p. 1103; Hone v. Van Schaick, 3 Barb. ch. 505; s. c. 3 N. Y. 538; Heyward v. Hasell, 2 S. C. 509; but see dictum by Lord Ch. Northington, Hussey v. Berkeley, 2 Eden 194; s. c. Ambler 603.

GRANT.

A generic term applicable to the transfer of all classes of real property. Cross v. Weare, etc., Co., 153 Ill. 510; Bouvier's Law Dictionary defines the word "grantee" as "He to whom a grant is made," and "grant" as "A generic term applicable to all transfers of real property." "This word is taken largely where

anything is granted or passed from one (the grantor) to another (the grantee), and in this sense it doth comprehend feoffment, bargains and sales, gifts, leases, charges and the like; for he that doth give or sell doth grant also and so some grants are of the land or soil itself; and some are of some profit to be taken out of, or from the soil, as rent, common, etc.; and some are of goods and chattels; and some are of other things as authorities, elections, etc. Shepp. Touchst. 228." Grand Union Tea Co. v. Hanna, 164 Ill. App. 575.

"The term grant was anciently and in strictness of usage applied to denote the conveyance of incorporeal rights and is the appropriate word for that purpose. Such rights are said to be in grant and not in livery; for, existing only in idea, in contemplation of law they cannot be transferred by livery of possession. Of course, at common law, a conveyance in writing was necessary, hence they are said to lie in grant, and to pass by delivery of the deed." Bouvier's Law Dictionary, 900. Streator Ind. Tel. Co. v. Interstate Ind. Tel. Co., 142 Ill. App. 191.

"The word 'grant' is more comprehensive in meaning than the term 'County.' It implies the conferring by the sovereign power of some valuable privilege, franchise, or other right of like character, upon a corporation, person, or class of persons. Under the ancient laws of England this was deemed in many cases to be the prerogative of the king, who possessed large powers for the regulation of trade and commerce." Downs v. United States (1902), 113 Fed. 147.

"'Grant' * * differs in many respects from 'bounty.' While it involves the idea of a favor or benefit conferred by the government, sometimes of an exclusive character, it does not necessarily embrace the act of appropriating or paying money out of the public treasury. Indeed, the word 'grant,' in its broad signification, may well include the remission of a tax already levied and assessed by the authority of government." Downs v. United States, 113 Fed. 148.

"Though the word 'grant' was origi-

nally made use of in treating of conveyances of interests in lands, to denote a transfer by deed of that which could not be passed by livery, and of course was applied only to incorporeal hereditaments, it has now become a generic term. applicable to the transfers of all classes of real property, and will be used in that broad sense in speaking of the formal transfer of title to lands * * *. Wood, in his treatise on Conveyancing, says: "The word "grant," taken largely, is where anything is granted or passed from one to another, and in this sense it comprehends feofiments, bargains and sales, gifts, leases in writing or by deed, and sometimes by word without writing." Faivre v. Daley, 93 Cal. 668 quoting.

"A grant being made for a valuable consideration, it shall be presumed that the grantor intended to convey, and the grantee expected to receive, the full benefit of it, and therefore that the grantor not only conveyed the thing specifically described, but all other things, so far as it was in his power to pass them, which were necessary to the enjoyment of the thing granted." Tinker v. Rockford, 137 Ill. 127.

"License" Compared.

Whether an instrument is a license of a grant depends upon the construction of the instrument as a question of law; if it merely confers a privilege to do an act or a series of acts under the owner which without permission would be unlawful, it is a license, but if it grants exclusive possession of premises against the world, including the owner, it is a grant and not a license, creating an estate or interest in the land. Berwyn v. Berglund, 255 Ill. 500.

GRANT, BARGAIN AND SELL.

Deed.

The words "grant, bargain, sell," in a deed, import an express covenant to the grantee and his heirs, that the grantor was seized of an indefeasible estate in fee, free from incumbrances by grantor, and also for quiet enjoyment as against

grantor and his heirs. Frisby v. Ballance, 7 Ill. 149. The words "grant, bargain and sell," when used in a deed, are made by the statute a warranty of an indefeasible title, etc., but the use of only one of two of those words will not have that effect. Wheeler v. County of Wayne, 132 Ill. 605. The words "grant, bargain, sell," are an "express" covenant that the grantor was seized of an indefeasible estate in fee simple, as also for quiet enjoyment by the grantee. Hawk v. McCullough, 21 Ill. 221; D'Wolf v. Haydn, 24 Ill. 529.

The words "grant, bargain and sell," shall be held an express covenant to the grantee, his heirs and assigns, that the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances from the grantor, except rents and services that may be reserved, unless limited by express words contained in such deed. McConnell v. Wilcox, 2 Ill. 377.

Mortgage.

The words "grant, bargain and sell," in a mortgage or deed of trust, by a private corporation, securing its issue of bonds, under the statute, have the effect of a warranty that the lands conveyed or mortgaged are free and clear of all incumbrances made by the company, and operate as a warranty of the company to the purchasers of the bonds that there is no other mortgage made by it on the property. Mullanphy Savings Bank et al. v. Schott et al., 135 Ill. 670.

GRANTEE.

The person to whom a grant is made. Grand Union, etc., Co. v. Hanna, 164 Ill. App. 575.

GRANTOR IN POSSESSION.

There are different kinds of possession and different modes of being in possession of real property. Where a person owns one hundred and sixty acres of land and resides upon and cultivates the land he is in possession. He may rent the land to a tenant and reside away from the prop-

erty and still be in possession. The same is true in regard to a town lot. A person may improve a part of a tract of land, and the improvement of a part, with a deed for the entire tract, will constitute possession of the whole. Actual residence is not required to constitute possession. Coleman v. Billings, 89 Ill. 183. In Hubbard v. Kiddo, 87 Ill. 578, it was held not necessary that land should be enclosed with a fence, or that a house should be erected thereon, or that it should be reduced to cultivation, to constitute possession. Therefore, one who improved his property by erecting buildings upon it was in possession of the property, and he was not required to reside on it to retain that possession, but, if he saw proper, he was at liberty to rent the property to any tenant he chose, and the possession of the tenant would, in contemplation of law, be the possession of the landlord. When, therefore, he made the deed of trust he was a grantor in possession,—as much so as if he had resided on the lot in person. Muller v. Balke, 167 Ill. 153.

GRANTS, PRIVILEGES AND FRAN-CHISES.

The expression, "grants, privileges and franchises," used in section 18 of the charter of the Illinois Central Railroad Company, as the consideration for the payment to the state of a percentage of its revenue, includes the exemption from taxation provided in such charter. People v. Illinois C. R. Co., 273 Ill. 233.

GRAVAMEN.

Webster's International Dictionary defines the term "gravamen" as follows: "The grievance complained of; the substantial cause of the action; also, in general, the ground or essence of a complaint." (Citing Bouvier as authority.) I. C. R. R. Co. v. The People, 81 Ill. App. 178.

GRAVEL.

Ordinance.

Gravel, as used in an ordinance providing for a macadamized pavement, does not mean a mixture of small stone, clay and loam. Gage v. People, 200 Ill. 438.

GRAVEL ROAD.

The objection to the certificate is that the levy was for a tax for "hard" roads while the vote was for "gravel" roads. The statute authorizes the construction of hard roads of different kinds, and the land owners exercised their right to determine by their petition what kind of hard roads they would build. If the tax had been for a different kind of road or had authorized the expenditure of the tax for a different kind it would have been invalid, but that was not the fact. gravel road is a hard road, and the certificate referred particularly to the vote, so that the money, when raised, could not be spent for constructing any other than gravel roads. The People v. Robeson, 253 Ill. 458.

GRAVITY SYSTEM.

A gravity system, as applied to drainage, is a system in which gravitation alone is depended upon for the discharge of the sewage. McChesney v. Village of Hyde Park, 151 Ill. 642.

GREAT.

The word "great" as used in the Criminal Code in the expression "great bodily harm," with reference to self defense, means high in degree, as contradistinguished from trifling. Lawlor v. People, 74 Ill. 231.

GREAT WASTE OF PROPERTY.

Work, to prevent a great waste of property, has always been held to be within the exception of statutes relating to work on Sunday. The words "great waste of property" do not necessarily mean property of great value. The circumstances and financial condition of the owner, and the value to him, and his need of the property, are to be considered in determining the true application and meaning of the phrase. Johnson v. People, 42 Ill. App. 598.

GREENBACKS.

United States treasury notes. Belfort v. Woodward, 158 Ill. 129; Black v. Lusk, 69 Ill. 75.

The term "greenback" is the popular and almost exclusive name applied to all United States treasury issues, and is not applied to any other species of paper currency. Hickey v. State, 23 Ind. 23.

Greenback is but a nickname, originally, or slang word, derived from the color of the engraving on the backs of the currency so denominated, and not either the legal designation, or a proper description of the things alleged to have been feloniously taken. Wesley v. State, 61 Ala. 287.

GREGORIAN EPOCH.

The time from which the Gregorian calendar or computation dates, i. e., from the year 1582.

GRETNA GREEN MARRIAGE.

A marriage celebrated at Gretna, in Dumfries (bordering on the county of Cumberland), in Scotland. By the law of Scotland, a valid marriage may be contracted by consent alone, without any other formality. When the marriage act (26 Geo. II. c. 33) rendered the publication of banns, or a license, necessary in England, it became usual for persons who wished to marry clandestinely to go to Gretna Green, the nearest part of Scotland, and marry according to the Scotch law; so a sort of chapel was built at Gretna Green, in which the English marriage service was performed by the village blacksmith. 19 & 20 Vict. c. 96, § 1, now requires twenty-one days previous residence in Scotland, unless one of the parties has a usual place of residence therein. Wharton.

GRIST.

Grain carried to the mill to be ground separately for the owner; grain carried to the mill for grinding at one time. Crawshaw v. Curtis, 119 Ill. App. 44.

GRIST MILL.

"A mill for grinding grain by the grist or for customers." Webster defines grist mill as a "mill for grinding grain, especially a mill for grinding grists or portions of grain brought by different customers." Crawshaw v. Curtis, 119 App. 44.

GROCERY.

The word "grocery," within the meaning of the charter of Chicago, relating to the power of the city to regulate liquor selling, is a place where liquors are retailed to be drunk. Schwuchow v. Chicago, 68 Ill. 447.

GROSS.

The entire amount; the sum total; without deduction of any kind. State v. Illinois, etc., R. Co., 246 Ill. 209.

In Webster's dictionary the word "gross" is defined: "Whole; entire; total; without deduction; as, the gross sum, or gross amount; gross weight, opposed to net." Wickes v. Wickes, 98 Ill. App. 162.

"Gross value is different from value. It is, though a convenient, an inaccurate expression, like 'gross profits.' The difference between what a thing costs and the larger sum it sells for is not profit, if the buying and selling are attended with expense to the trader. Value is net value." Per Ld. Bramwell, Dobbs v. Grand Junc. Waterworks Co., 53 L. J. Q. B. 52; 9 App. Ca. 49.

GROSS EARNINGS

See Gross Receipts.

GROSS INCOME.

See Gross Receipts.

GROSS NEGLIGENCE.

See also, Such Gross Negligence as Evidences Wilfulness.

Defined.

The want of slight diligence. Chicago, B. & Q. R. Co. v. Johnson, 103 Ill. 523;

J. S. E. Ry. Co. v. Southworth, 135 Ill. 255; C. B. & Q. R. R. Co. v. Mehlsack, 44 Ill. App. 127; Kranz v. Thieben, 15 Ill. App. 485; Wabash, St. L. & P. R'y Co. v. Hicks, 13 Ill. App. 414; that high degree of negligence which indicates the absence of the slightest care. Michigan, etc., Co. v. Carrow, 73 Ill. 357.

When there is a particular intention to injure, or a degree of wilful or wanton recklessness, which authorizes the presumption of an intention to injure generally, the act ceases to be merely negligent and becomes one of violence or fraud. In negligence there is no purpose to do a wrongful act or to omit the performance of a duty. Negligence, even when gross, is mischief, although it may be cogent evidence of such fact. What is less than slight negligence the law takes no cognizance of as a ground of action, and beyond gross negligence the law, while recognizing there may be liability for trespass of wilful and wanton recklessness which authorizes the presumption of general intention to do wrong, recognizes no degree of negligence. J. S. Ry. Co. v. Southworth, 32 Ill. App. 313.

Implies Recklessness.

Gross negligence has always the element of recklessness. Michigan, etc., R. Co. v. Carrow, 73 Ill. 357.

As Used in an Insurance Policy.

The term "gross negligence," as used in a condition in a policy of insurance exempting from loss on that account, is the want of that diligence which even careless men are accustomed to exercise. Lycoming Ins. Co. v. Barringer, 73 Ill. 235.

As Applied to Gratuitous Bailee.

Gross negligence, as applied to gratultous bailees, is defined to be "nothing more than a failure to bestow the care which the property in its situation demands;" and the court further says: "the omission of the reasonable care required is the negligence which creates the liability, and whether this existed is a question of fact for the jury to determine." Gray et al. v. Merriam, 148 Ill. 187; Chicago Hotel Co. v. Bauman, 131 Ill. App. 328.

GROSS AND ORDINARY NEGLI-GENCE.

"Strictly speaking, these expressions v: e indicative rather of the degree of care and diligence which is due from a party and which he fails to perform, than of the amount of inattention, carelessness, or stupidity which he exhibits. If very little care is due from him, and he fails to bestow that little, it is called gross negligence. If very great care is due, and he fails to come up to the mark required, it is called slight negligence. And if ordinary care is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called ordinary negligence. In each case, the negligence, whatever epithet we give it, is failure to bestow the care and skill which the situation demands; and hence it is more strictly accurate perhaps to call it simply 'negligence.' And this seems to be the tendency of modern authorities." Pennsylvania Co. v. Purvis, 128 Ill. App. 372.

GROSS PROCEEDS.

It is said in 2 Arnould on Ins. 969, that, "By the gross proceeds of the sale, is meant the market price at which the merchant, after paying freight, duty and landing charges, can sell the goods to the consumer or purchaser at the port of arrival," and that, "by the term net proceeds, is meant the gross proceeds, deducting freight, duty and landing charges." Ib. 970. Lamar Ins. Co. v. McGlashen et al., 54 Ill. 518.

GROSS RECEIPTS.

There is no dispute as to the meaning of the word "gross" and it is conceded that it means the whole or entire amount of premiums received for business done in this State during the year. The word "gross" is opposed to "net," and its ordinary meaning is the entire amount of the receipts of a business, while the net receipts are those remaining after deductions for the expenses and charges of conducting the business. German All. Ins. Co. v. Van Cleave, 191 Ill. 414.

The phrases, "gross income," "gross proceeds" and "gross receipts," are of equivocal import. Their construction and meaning will depend much upon the context and the special matter to which they (23 Am. & Eng. Ency. of are applied. Law,-2d ed.,-p. 159, and cases cited; 4 Words and Phrases, pp. 3174, 3501-3507, inclusive; 6 Words and Phrases, pp. 5639-5642.) In Commonwealth v. United States Express Co., 157 Pa. St. 579, the court held that a tax on gross receipts meant a tax upon the total receipts and not upon the net earnings or the gross earnings of the express company's business, less the amount paid to other companies for transportation services. German Alliance Ins. Co. v. VanCleave, 191 Ill. 410, this court held that it appeared to be the intention under a certain law to levy a tax on the "gross income" of foreign fire insurance companies, and that this required such companies to pay a tax "on the gross receipts of their business." See, also, Goldsmith v. A. & S. R. R. Co., 62 Ga. 468; Railway Co. v. Shinn, 52 Ark. 93; People v. Roberts, 92 Pa. St. 407; Philadelphia & Reading Railroad Co. v. Commonwealth, 104 Pa. St. 80; People v. Morgan, 99 N. Y. Supp. 711; Remington v. Field, 16 R. I. 509; State v. Ill. Central R. R. Co., 246 Ill. 268, 269.

GROSS PROCEEDS, RECEIPTS OR INCOME.

The fact that the legislature by an act subsequent to the Illinois Central Railroad Company's charter, authorized that company to lease its lines does not take such lines out of the charter exemption with reference to taxation, provided the lines were such as were authorized by the charter; but the earnings of such lines, by whatever name called, are part of the gross "proceeds, receipts or income" of the road. State Board of Equalizations v. The People, 229 Ill. 461.

GROUND.

"Ground" most frequently means earth surface; but it also means the lower surface in the space to which the word relates, as the dictionaries teach us, and as popular writers exemplify. Wood v. Carter, 70 Ill. App. 219.

GROUNDS.

"The word 'grounds' does not generally include land under water." Gould Waters, § 28, citing State v. Jersey City, 1 Dutch 525, 530; Commonwealth v. Roxbury, 9 Gray, 491.

GROWING UP IN CRIME.

"We understand the term 'growing up in crime' [in the constitution providing that the legislature may provide for the establishment of a school for the safe keeping of children who are growing up in crime], * * as referring, not only to a minor who is a criminal, who has been or is now committing a crime, but that it also refers to a status, a tendency in the direction of crime." Scott v. Flowers. 60 Neb. 682.

GUARANTOR.

Bill or Note.

One who engages that the note shall be paid, but who is not an indorser or surety. Pfaelzer v. Kau, 207 Ill. 122; Gridley v. Capen, 72 Ill. 13.

GUARANTY.

A promise to answer for the payment of a debt, or the performance of a duty, by another, who is himself, in the first instance, liable for such payment or performance. Schultz v. Deeming, 194 Ill. App. 514.

"The definition of a guaranty, by text-writers, is, an undertaking by one person that another shall perform his contract or fulfil his obligation, or that, if he does ot the guarantor will do it for him. A guarantor of a bill or note is said to be one who engages that the note shall be paid, but is not an indorser or surety. 2 Pars. on Bills and Notes, 117. If this be so, then he must be regarded as an original promisor, and this, we believe, is the doctrine of adjudged cases." Gridley v.

Capen et al., 72 Ill. 13; Pfaelzer v. Kau, 207 Ill. 122, 123.

Daniel on Negotiable Instruments (section 1752) defines a contract of guaranty as follows: "A guaranty is defined to be a promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who is in the first instance liable to such payment or performance." Parsons on Contracts (vol. 2, p. 3), says: "Guaranty is held to be the contract by which one person is bound to another for the due fulfillment of a promise or engagement of a third party." Story on Promissory Notes says: "A guaranty, in its legal and commercial sense, is an undertaking by one person to be answerable for the payment of some debt, or the due performance of some contract or duty, by another person, who himself remains liable to pay or perform the same." Dickerson v. Derrickson, 39 Ill. 574, this court, in speaking of a guaranty, says: "The contract of an absolute guaranty is, that if the principal fails to pay, the guarantor will. If it were not so, it would not be a guaranty, but an independent undertaking." See, also, Rich v. Hathaway, 18 Ill. 548; Abbott v. Brown, 131 Ill. 113.

The guaranty of a note is not a guaranty of the payment of the note, but a guaranty of the collection of the note. A contract guaranteeing the payment of a note or debt, is an absolute contract. By it the guarantor undertakes, for a valuble consideration, to pay the debt at maturity, if the principal debtor fails to do so; and upon it, if the debt is not paid at maturity, the guarantor may be sued at once. But a contract guaranteeing the collection of a note or debt, is conditional in its character, and the guarantor thereby undertakes to pay the debt, upon condition that the owner thereof shall make use of the ordinary legal means to collect it from the principal debtor with diligence and without avail. Newlan v. Harrington, 24 Ill. 207; Day v. Elmore, 4 Wis. 190.

By some courts it seems to be held not only that the guarantor of the collection of the note or debt can avoid liability to pay until the impossibility of collecting the debt has been demonstrated by the prosecution of a suit to judgment and execution against the principal debtor without success, but that such prosecution is a condition precedent to the right of recovery against the guarantor, and that the fact of insolvency is no excuse for the failure so to prosecute. The better opinion, however, seems to be, that the insolvency of the principal debtor will excuse the failure to institute suit and obtain judgment; (1 Brandt on Sur. and Guar., section 98, and cases in note; Voorhies v. Atlee, 29 Iowa, 49; Durand v. Bowen, 73 Iowa 573); and such is the rule in this State as laid down in the case of Judson v. Gookwin, 37 III. 286. Dillman v. Nadelhoffer, 160 Ill. 124, 125.

Absolute or Contingent.

Where a guarantor undertakes to pay a specific sum of money in case a third party fails to do so, that constitutes an absolute guaranty. Where a guaranty is absolute, it is the duty of the guarantor to see to the payment of the money; no demand or notice of non-payment is necessary to fix his liability. It seems, however, that when the guaranty depends upon the happening of some contingent event, it is necessary, when the event has occurred, that notice should be given to the guarantor within a reasonable time. Dickerson v. Derrickson, 39 Ill. 577.

Relation Created.

The by-laws of an association providing that it "guarantees" a dividend of a fixed amount to stockholders does not, by the word "guarantees," create a relation of debtor and creditor between the association and its stockholders, but creates a charge upon all accruing profits at the stipulated rates. Cratty v. Peoria, etc., Ass'n, 120 Ill. App. 602.

GUARANTY INSURANCE.

"Guaranty insurance," in its practical sense, is a guaranty or insurance against loss in case a person named shall make a designated default or be guilty of specified conduct. U. S., etc., Co. v. First, etc.,

Bank, 233 Ill. 481; People v. Rose, 174 Ill. 313.

"The phrase guaranty insurance is not used with any hard and fast meaning. The term may include all insurance as being synonymous therewith, for insurance has for its purpose to guarantee against all forms of loss or pecuniary injury. (2 May on Insurance,—4th ed.,—sec. 540.) It has been stated to be generic in its scope and signification, embracing within it those subsidiary species of insurance contracts known as 'fidelity,' 'commercial' and 'judicial' insurance. (Frost on Guaranty Insurance,-2d ed.,-sec. 1.) Guaranty insurance, as ordinarily used and understood, is a guaranty of insurance against loss in case a person named shall make a designated default or be guilty of a specified misconduct." (15 Am. & Eng. Ency. of Law,—2d ed.,—note 1, p. 1; People v. Fidelity and Casualty Co. of New York, supra.) Guaranty insurance is a contract whereby one, for a consideration, agrees to indemnify another against loss arising from the want of integrity, fidelity or insolvency of employees and persons holding positions of trust, against insolvency of debtors, losses in trade, losses from non-payment of notes and other evidences of indebtedness, or against other breaches of contract. It includes other forms of insurance which are specifically classified, such as "fidelity guaranty," "credit guaranty." etc. (1 Joyce on Insurance, sec. 12.) This definition was quoted with approval by this court in People v. Rose, 174 Ill. 310. See, also, McCornack on Insurance, sec. 235; 1 Cooley's Briefs on the Law of Insurance, 236, 635; 17 Laws of England (Halsbury), 572. Surety insurance is generally used as synonymous with guaranty insurance. Frost on Guaranty Insurance,-2d ed.-sec. 3; Gagan v. Stevens, 9 Pac. Rep. 706; The People v. Potts, 264 Ill. 526, 527, 531.

GUARDIAN AD LITEM.

"A guardian ad litem has been defined to be a person, appointed by a court of justice to prosecute or defend for an infant in any suit to which he may be a party." (10 Ency. of Pl. & Pr., p. 616.) Heppe v. Szczepanski, 209 Ill. 100.

GUARDIANSHIP.

"Under the ancient Roman law * * the son who was delivered from patria potestas by the death of his father or grandfather remained under guardianship till an epoch which for general purposes may be described as arriving with his fifteenth year; but the arrival of that epoch placed him at once in the full enjoyment of personal and proprietary independence * * * a prolongation of the patria potestas up to the period of bare physical manhood. It ended with puberty, for the vigor of the theory demanded that it should do so. Inasmuch, however, as it did not profess to conduct the orphan ward to the age of intellectual maturity or fitness for affairs, it was quite unequal to the purposes of general convenience: and this the Romans seem to have discovered at a very early stage of their social progress. One of the very oldest monuments of Roman legislation is the lexlætoria or plætoria, which placed all free males who were of full years and rights under the temporary control of a new class of guardians called curators, whose sanction was required to validate their acts or contracts. The twentysixth year of the young men's age was the limit of this statutory supervision; and it is exclusively with reference to the age of twenty-five that the terms 'majority and minority' are employed in Roman law. Privilege or wardship, in modern jurisprudence has adjusted itself with tolerable regularity to the simple principle of protection to the immaturity of youth both bodily and mental. It has its natural termination with years of discretion." Maine, Anc. Law, 160.

GUERRILLA PARTY.

(Span. guerra, war; guerrilla, a little war.) In military law. Self-constituted sets of armed men, in times of war, who form no integrant part of the organized army, do not stand on the regular payroll of the army, or are not paid at all, take

up arms and lay them down at intervais, and carry on petty war, chiefly by raids, extortion, destruction, and massacre. Lieber, Guerr. Part. 18. See Halleck, Int. Law, 386; Woolsey, Int. Law, 299.

Partisan, free-corps, and guerrilla are terms resembling each other considerably in signification; and, indeed, partisan and guerrilla are frequently used in the same sense. See Halleck, Int. Law, 386.

GUEST.

A traveler who stays at an inn from day to day, for pay, and without a special contract to board for any definite time. If he is invited as a friend by the inn keeper, he is not a "guest" in the technical sense (Bac. Abr. "Inns," c. 5), and, if he stays under a contract for a definite time, he is not a guest, but a boarder. 5 Barb. (N. Y.) 560; 26 Vt. 332.

An innkeeper's "guest" is a traveller, who, by himself, or his beast, has been, however temporarily, accepted to, and remains under, hospitality within an inn or its curtilage. Calye's Case, 1 Sm. L. C. 141, and cases there collected: Strauss v. County Hotel Co., 53 L. J. Q. B. 25; 12 Q. B. D. 27: Add. C. 303.

Guest is a traveller or wayfarer, who comes to an inn and is accepted. Manning v. Wells, 9 Humph. (Tenn.) 748.

If a person goes to an inn as a way-farer, and a traveller, and the innkeeper receives him into his inn as such, he becomes the imnkeeper's guest. • • • Neither the length of time that a man remains at an inn, nor any agreement he may make as to the price of board per day, or per week deprives him of his character as a traveller and a guest, provided that he retains his status as a traveller in other respects. Norcross v. Norcross, 53 Me. 169.

Distinguished from Boarder.

A guest is a traveller or wayfarer; but a person who comes upon a special contract to board or sojourn at an inn, is not in law a guest, but a boarder. Chamberlain v. Masterson, 26 Ala. 377.

"The distinction between a guest and a boarder seems to be this: The guest

comes without any bargain for time, remains without one, and may go when he pleases, paying only for the actual entertainment which he receives; and it is not enough to make a boarder, and not a guest, that he has stayed a long time in the inn in this way." Shoecraft v. Bailey, 25 Ia. 555.

GUIDON DE LA MER.

The name of a treatise on maritime law, written in Rouen—then Normandy—in 1671, as is supposed. It was received on the continent of Europe almost as equal in authority to one of the ancient codes of maritime law. The author of this work is unknown. This tract or treatise is contained in the "Collection de Lois Maritimes," by J. M. Pardessus, vol. 2, p. 371 et seq.

GUILTY KNOWLEDGE.

Knowledge that the property was stolen goods constitutes guilty knowledge. Huggins v. People, 135 Ill. 246.

GUN.

For the purposes of the Gun License Act, 1870 (33 & 34 V. c. 57), "gun," includes a firearm of any description, and an air-gun or any other kind of gun from which any shot, bullet, or other missile can be discharged (s. 2). A small toy pistol is a "firearm" within this definition. Campbell v. Hadley, 40 J. P. 756.

HABEAS CORPUS.

Blackstone, in speaking of the writ of habeas corpus ad subjiciendum, says: "This is a high prerogative writ, and therefore, by the common law, issuing out of the court of king's bench, not only in term time, but also during the vacation, by a flat from the chief justice, or any other of the judges, and running into all parts of the king's dominions, for the king is at all times entitled to have an account why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted." 2 Bl. Com. 181.

The habeas corpus ad subjiciendum is that which issues in criminal cases, and is deemed a prerogative writ which the king may issue to any place, as he has a right to be informed of the state and condition of the prisoner, and for what reasons he is confined. It is also, in regard to the subject, deemed a writ of right, that is, such an one as he is entitled to ex debito justitiae, and is in the nature of a writ of error to examine the legality of the commitment, and therefore commands the day, the caption and cause of detention to be returned. 4 Bac. Abr. 564.

The habeas corpus ad subjiciendum (so termed from the language of the writ, to undergo and receive all such things as the court shall consider of the party in that behalf), issues in criminal cases, and is deemed a prerogative writ which the king may send to any place, he having a right to be informed of the state and condition of every prisoner, and for what reason he is confined. It is also, in regard to the ubject deemed his writ of right, to which he is entitled ex debito justitiae, and is in the nature of a writ of error to examine the legality of the commitment, and therefore commands the day, the caption and the cause of detention to be returned. 1 Chit. Crim. Law, 120; 2 Tomlin's Law Dict. 63-64.

The proceeding in habeas corpus, says Mr. Justice Betts, "is an inquisition by the government at the suggestion and instance of an individual, but still in the name and capacity of the sovereign." Barry v. Mercein, 5 How. 108.

The writ of habeas corpus is a high prerogative writ, known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause. It is in the nature of a writ of error to examine the legality of the commitment. The People v. Bradley, 60 Ill. 398, 399, 400, 401.

This is the most famous writ in the law; and, having for many centuries been employed to remove illegal restraint upon personal liberty, no matter by what power imposed, it is often called the great "writ of liberty." It takes its name from

the characteristic words it contained when the process and records of the English courts were written in Latin:

Praecipimus tibi quod corpus A B in custodia vestra detentum, ut dicitur, una cum causa captionis et detentionis suae, quocunque nomine idem A B censeatur in eadem habeas coram nobis apud Westm. etc., ad subjiciendum et recipiendum ea, quae curia nostra de co ad tunc et ibidem ordinari contigerit in hac parte, etc.

There were several other writs which contained the words habeas corpus; but they were distinguished from this and from one another by the specific terms declaring the object of the writ, which terms are still retained in the nomenclature of writs, as, habeas corpus ad respondendum, ad testificandum, ad satisfaciendum, ad prosequendum, and ad facienum et recipiendum, ad deliberandum et recipiendum.

This writ was in like manner designated as habeas corpus ad subjictendum et recipiendum; but, having acquired in public esteem a marked importance by reason of the nobler uses to which it has been devoted, it has so far appropriated the generic term to itself that it is now, by way of eminence, commonly called the "Writ of Habeas Corpus."

The date of its origin cannot now be ascertained. Traces of its existence are found in Y. B. 48 Edw. III. 22; and it appears to have been familiar to, and well understood by, the judges in the reign of Henry VI. In its early history it appears to have been used as a means of relief from private restraint. The earliest precedents where it was used against the crown are in the reign of Henry VII. Afterwards the use of it became more frequent, and in the time of Charles I. it was held an admitted constitutional remedy. Hurd, Habeas Corpus, 145.

In process of time, abuses crept into the practice, which in some measure impaired the usefulness of the writ. The party imprisoning was at liberty to delay his obedience to the first writ, and might wait till a second and third were issued before he produced the party; and many other vexatious shifts were practised to detain state prisoners in custody. 3 Bl. Comm. 135.

Greater promptitude in its execution was required to render the writ efficacious. The subject was accordingly brought forward in parliament in 1668, and renewed from time to time until 1679, when the celebrated habeas corpus act of 31 Car. II. was passed. The passage of this act has been made the theme of the highest praise and congratulation by British authors, and is even said to have "extinguished all the resources of oppression." Hurd, Habeas Corpus, 93.

This act being limited to cases of commitments for "criminal or supposed criminal matters," every other species of restraint of personal liberty was left to the ordinary remedy at common law; but, doubts being entertained as to the extent of the jurisdiction of the judge to inquire into the truth of the return to the writ in such cases, an attempt was made, in 1757, in the house of lords, to render the jurisdiction more remedial. It was opposed by Lord Mansfield as unnecessary, and failed, for the time, of success. It was subsequently renewed, however; and the act of 56 Geo. III. c. 100, supplies, in England, all the needed legislation in cases not embraced by the act of 31 Car. II. Hurd, Habeas Corpus.

The English colonists in America regarded the privilege of the writ as one of the "dearest birthrights of Britons," and sufficient indications exist that it was frequently resorted to. The denial of it in Massachusetts by Judge Dudley in 1689 to Rev. John Wise, imprisoned for resisting the collection of an oppressive and illegal tax, was made the subject of a civil action against the judge, and was, moreover, denounced, as one of the grievances of the people, in a pamphlet published in 1689 on the authority of "the gentlemen, merchants, and inhabitants of Boston and the country adjacent." In New York, in 1707, it served to effect the release of the Presbyterian ministers Makemie and Hampton from an illegal warrant of arrest issued by the governor, Cornbury, for preaching the gospel without license. In New Jersey, in 1710, the assembly denounced one of the judges for

refusing the writ to Thomas Gordon, which, they said, was the "undoubted right and great privilege of the subject." In South Carolina, in 1692, the assembly adopted the act of 31 Car. II. This act was extended to Virginia by Queen Anne early in her reign, while in the assembly of Maryland in 1725 the benefit of its provisions was claimed, independent of royal favor, as the "birthright of the inhabitants." The refusal of parliament in 1774 to extend the law of habeas corpus to Canada was denounced by the continental congress in September of that year as oppressive, and was subsequently recounted in the Declaration of Independence as one of the manifestations on the part of the British government of tyranny over the colonies. Hurd, Habeas Corpus, 109-120.

It is provided in article 1, § 9, subd. 2, of the constitution of the United States that "the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

Similar provisions are found in the constitutions of most of the states. In Virginia and Vermont, however, it is forbidden to suspend the privilege of the writ in any case; but in the constitutions of Maryland, North Carolina, and South Carolina the writ is not mentioned.

Congress, by act of March 3, 1863, authorized the president to suspend the privilege of the writ throughout the whole or any part of the United States, whenever in his judgment the public safety might require it, during the Rebellion. A partial suspension took place.

Nor has the power ever been exercised by the legislature of any of the states, except that of Massachusetts, which, on the occasion of "Shay's Rebellion," suspended the privilege of the writ from November, 1786, to July, 1787.

HABEAS CORPUS ACT.

The statute of 31 Chas. II. c. 2. 3 Bl. Comm. 135; 3 Steph. Comm. 699. This statute has been adopted in substance in the United States. 2 Kent, Comm. 27.

HABEAS CORPUS AD DELIBER-ANDUM ET RECIPIENDUM.

(Lat.) A writ which is issued to remove, for trial, a person confined in one county to the county or place where the offense of which he is accused was committed. Bac. Abr. "Habeas Corpus" (A); 1 Chit. Crim. Law, 132; Grady & S. Cr. Prac. 201. Thus, it has been granted to remove a person in custody for contempt to take his trial for perjury in another county. 1 Tyrwh. 185.

HABEAS CORPUS AD FACIEN-DUM ET RECIPIENDUM.

(Lat.) A writ usually issued in civil cases to remove an action from an inferior court, where the defendant is sued and imprisoned, to some superior court which has jurisdiction over the matter, in order that the cause may be determined there. This writ is commonly called habeas corpus cum causa, because it commands the judges of the inferior court to return the day and cause of the caption and detainer of the prisoner. Bac. Abr. "Habeas Corpus" (A); Bagl. Cham. Prac. 297; 3 Bl. Comm. 130; Tidd, Prac. 296.

This writ may also be issued at the instance of the bail of the defendant, to bring him up to be surrendered in their discharge, whether he is in custody in a civil suit or on a criminal accusation. Tidd, Prac. 298; 1 Chit. Crim. Law, 132.

HABEAS CORPUS AD PROSE-QUENDUM.

(Lat.) A writ which issues when it is necessary to remove a prisoner in order to prosecute in the proper jurisdiction wherein the fact was committed. 3 Bl. Comm. 130.

HABEAS CORPUS AD RESPONDENDUM.

(Lat.) A writ which is usually employed in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter. 2

Sellon, Prac. 259; 2 Mod. 198; 3 Bl. Comm. 129; Tidd, Prac. 300.

This writ lies also to bring up a person in confinement to answer a criminal charge. Thus, the court issued it to the warden of the fleet, to take the body of the prisoner confined there before a magistrate, to be examined respecting a charge of felony or misdemeanor. 5 Barn. & Ald. 730. But it was refused to bring up the body of a prisoner under sentence for a felony, for the purpose of having him tried for a previous felony.

HABEAS CORPUS AD SATISFA-CIENDUM.

(Lat.) A writ which is issued to bring a prisoner from the prison of one court into that of another, in order to charge him in execution upon a judgment of the last court. 2 Sellon, Prac. 261; 3 Bl. Comm. 130; Tidd, Prac. 301.

HABEAS CORPUS AD TESTIFI-CANDUM.

(Lat.) A writ which lies to bring up a prisoner detained in any jail or prison, to give evidence before any court of competent jurisdiction. Tidd, Prac. 739; 3 Bl. Comm. 130; 2 Sellon, Prac. 261.

The allowance of this writ resting in the discretion of the court, it will be refused if the application appear to be in bad faith, or a mere contrivance. 3 Burrows, 1440.

It was refused to bring up a prisoner of war (2 Doug. 419), or a prisoner in custody for high treason. Peake, Add. Cas. 21.

It would of course be refused where it appeared from the application that the prisoner was under sentence for crime which rendered him incompetent as a witness.

The application for the writ is made upon affidavit, stating the nature of the suit and the materiality of the testimony, together with the general circumstances of restraint which render the writ necessary. Cowp. 672; Fost. Crim. Law, 396; 2 Cow. & H. notes to Phil. Ev. 658.

HABENDUM.

The habendum in a deed cannot be made to effect the conveyance of a thing not mentioned in the premises of the deed, or transform a deed purporting in the premises to convey only the interest of the grantor, into a conveyance of the fee simple absolute. Frink v. Darst, 14 Ill. 307.

"The Habendum of a deed, is that part of the deed which doth begin with, to have and to hold." Shep. Touchst. 73.

HABENDUM CLAUSE.

A clause of which the purpose is merely to define the estate which the grantee is to take in the property conveyed. Wheeler v. Wayne County, 132 Ill. 605.

The portions of a deed operative to define and limit the estate are the granting clause and the habendum. The office of the habendum is to limit and define the estate granted, and if there is repugnancy between the granting clause and the habendum the former must prevail. Smith v. Tucker, 250 Ill. 50; Riggin v. Love, 72 III. 553; 4 Kent's Com. 468. Chancellor Kent there says that the habendum has degenerated into a mere useless form,which is, perhaps, not exact in case of any ambiguity in a deed. The habendum in this deed is to the grantee, his heirs and assigns, but if the granting clause conveyed an estate less than an absolute fee simple and there was a possibility of reverter to the grantor and his heirs, the habendum is clearly repugnant to the granting clause and wholly ineffective. There is in this deed no limitation over to a third person upon the happening of the contingency mentioned, but by the granting clause a certain estate was granted and defined. The extent of the estate conveyed is mentioned in the deed only in the granting clause, which provides that the estate should be determined by the death of the grantee without issue. Whatever interest in the estate was not granted remained in the grantor and his heirs. Peterson v. Jackson, 196 Ill. 40; Pinkney v. Weaver, 216 Ill. 185; Morton v. Babb, 251 Ill. 492, 493.

HABIT OF GETTING INTOXI-CATED.

The involuntary tendency to become intoxicated, which is acquired by frequent repetition. Murphy v. The People, 90 Ill. 60.

An instruction that a person who is in the habit of drinking intoxicating liquors intemperately is a person "in the habit of getting intoxicated," within the meaning of the act of 1872, relating to intoxicating liquor, and prohibiting its sale to such persons, is erroneous, since such instruction in effect told the jury that a person used liquor beyond a moderate use, such person was within the statute, and the instruction was therefore indefinite and misleading. Mullinix v. People, 76 Ill. 213.

HABITANCY.

"It is difficult to give an exact definition of habitancy. In general terms, one may be designated as an inhabitant of that place which constitutes the principal seat of his residence, of his business, pursuits, connexions, attachments, and of his political and municipal relations. It is manifest, therefore, that it embraces the fact of residence at a place, with the intent to regard it and make it his home. The act and intent must concur, and the intent may be inferred from declarations and conduct." Lyman v. Fiske, 17 Pick. 284.

HABITO.

A Latin word, definable as "to live in; to dwell in." Spragins v. Houghton, 3 Ill. 396.

HABITS.

Proof that deceased was in the habit of making prompt and punctual payments of demands against him, is only admissible in aid of presumption of payment arising from lapse of time. Parker v. Parker, 52 App. 333.

Habit does not constitute usage. A habit or practice of a particular person or of persons in a particular trade does not of itself constitute usage. It is only when practice has come to have the essential characteristics of usage that it can be considered as such. Curry v. Syndicate, 104 App. 165.

HABITUAL DRUNKARD.

Bouvier defines an habitual drunkard to be "a person given to inebriety or the excessive use of intoxicating drink, who has lost the power or will, by frequent indulgence, to control his appetite for it." In State v. Pratt, 34 Vt. 323, it was said: "An habitual drunkard is one who is in the habit of getting drunk, or is commonly or frequently so, but not necessarily always or universally drunk:" and it was there further said, "the common term or phrase uses liquor to excess when applied to a person is ordinarily understood to mean the same as saying that he gets intoxicated or drunk." In Commonwealth v. Whitney, 5 Gray 85, it was said that he is an habitual drunkard "whose habit is to get drunk, whose inebriety has become habitual." In Ludwick v. Commonwealth, 18 Penn. St. 174, this language was used: "Occasional acts of drunkenness do not make one an habitual drunkard. Nor is it necessary he should be continually in an intoxicated state. A man may be an habitual drunkard and yet be sober for days and weeks together. The only rule is, has he a fixed habit of drunkenness." In Magahay v. Magahay, 35 Mich. 210, the court held the defendant was an habitual drunkard within the meaning of the divorce law; and as the basis of that conclusion they said, "he has a habit of indulging in intoxicating liquor so firmly fixed that he becomes intoxicated as often as the temptation is presented by his being in the vicinity where liquor is sold. He either makes no vigorous effort to resist and overcome the habit, or his will has become so enfeebled by indulgence that resistance is impossible." In Murphy v. People, 90 Ill. 59, it was held that a person who is in the habit of getting intoxicated is one who has the involuntary tendency to become intoxicated, which is acquired by frequent repetition. Richards v. Richards, 19 Ill. App. 467, 468.

HABITUAL DRUNKENNESS.

See also Drunkenness.

What Constitutes.

There is habitual drunkenness within meaning of divorce statute where for the statutory period defendant is frequently and customarily or habitually given to the excessive use of intoxicating drink, and by such indulgence loses the power or the will to control his appetite. Richards v. Richards, 19 App. 465.

Irresistible Habit.

The expression "habitual drunkenness," as used in section 1 of the Divorce Act (J. & A. ¶ 4215), means an irresistible habit of getting drunk; a fixed habit of drinking to excess; an involuntary tendency to become intoxicated, which is acquired by frequent repetition—such as indulgence to excess as to show a formed habit and inability to control the appetite. Garrett v. Garrett, 252 Ill. 326. See also Murphy v. People, 90 Ill. 59.

Implies Fixed Habit.

In order to prove a charge in a bill for divorce of "habitual drunkenness," within the meaning of section 1 of the Divorce Act (J. & A. ¶ 4215), relating to causes of divorce, it must be shown that the drinking to excess complained of is indulged in so frequently as to become a fixed habit. Youngs v. Youngs, 33 Ill. App. 224.

Consent of Spouse.

A wife is not guilty of habitual drunkenness, within the meaning of section 1 of the Divorce Act (J. & A. ¶4215), where it appears that her drinking was either at the request or with the consent of her husband, or by the advice of a physician. Garrett v. Garrett, 252 Ill. 327.

Stupor Produced by Drug.

The expression "habitual drunkenness," used in section 1 of the Divorce Act (J. & A. ¶ 4215), relating to causes for divorce, does not include the intoxication and stupor produced by the excessive use of morphine. Youngs v. Youngs, 130 Ill. 234. (Aff. 33 Ill. App. 224.)

HABITUALLY.

Webster defines "habitually" as "customarily; by frequent practice or use." It does not appear to mean "exclusively" or "entirely." Garoutte, J., in Stanton v. French, 91 Cal. 277 (1891).

HACKNEY CARRIAGE.

"I think that a hackney carriage is a carriage exposed for hire to the public, whether standing in the public street, or exposed for public use in a private gateway. The test is whether the carriage is held out for the general accommodation of the public." Per Lush, J., Bateson v. Oddy, 43 L. J. M. C. 131; 30 L. T. 712; 22 W. R. 703; Skinner v. Usher, 41 L. J. M. C. 158; L. R. 7 Q. B. 423; Case v. Storey, L. R. 4 Ex. 319; 38 L. J. M. C. 113.

HAD MADE OVER.

Where it is said that a person "had made over" certain property to another person, the phrase "had made over" has reference to a conveyance which might be a donation, or mortgage, or it might mean a conveyance passing a nominal title for the use of the grantor. Kingsbury v. Burnside, 58 Ill. 330.

HAERES.

A term of the Roman law meaning "heir." Adams v. Akerlund, 168 Ill. 639.

HALF.

The word "half," when used in describing lands, should be construed as meaning half in quantity, unless the context or surrounding facts and circumstances show a contrary intention. Hartford Iron Mining Co. v. Cambria Mining Co., 80 Mich. 497, citing Jones v. Pashby, 62 Mich. 614.

HALF BLOOD.

A term denoting the degree of relationship which exists between those who have one parent only in common. By the English common law, one related to an intestate of the half-blood only could never inherit, upon the presumption that he is not of the blood of the original purchaser; but this rule has been greatly modified by 3 & 4 Wm. IV. c. 106.

In this country, the common-law principle on this subject may be considered as not in force, though in many states some distinction is still preserved between the whole and the half-blood. 4 Kent. Comm. 403, note; 2 Yerg. (Tenn.) 115; 1 McCord (S. C.) 456; 31 Pa. St. 289; Dane, Abr. Index; 2 Washb. Real Prop. 411.

The section of the Statute of Descent which provides that in "no case shall there be a distinction between the kindred of the whole and the half blood," is not confined, in its application, to cases where the ancestor, from whom the estate is derived, leaves children by different mothers. The children of the same mother, but who have different fathers, are no less brothers and sisters of the half-blood than are the children of a common father, but who have different mothers, and all are equally within the operation of the statute. Oglesby Coal Co. v. Pasco, 79 Ill. 166.

HALF SISTER.

A female person considered in the relation to another person one of whose parents is the same. Williams v. Mc-Keene, 193 Ill. App. 617.

HALF-YEAR.

In the computation of time, a half-year consists of one hundred and eighty-two days. Co. Litt. 135b; Rev. St. N. Y. pt. 1, c. 19, tit. 1, § 3.

"Half a year" is not the same as "six months" but means half the days of a year. "'Half a yeare' containeth 182 dayes; for the odde houres, in legal computation, are rejected" (Co. Litt. 135 b).

But in Woodf. (348), a half-year is stated to be 183 days.

"It is clear from a series of cases running back as far as the time of Henry VIII., that 'half a year's notice' means notice for half a year, and not for six months." Lord Coleridge, C. J., in Barlow v. Teal, 15 Q. B. D. 405 (Field, J., concurring), citing Year Book, 13 Hen. VIII., 156; Buller, J., in Right v. Darby, 17 R. 159; Lord Coleridge, C. J., in Wilkinson v. Calvert, 3 C. P. D. 360.

HALLUCINATION.

In medical jurisprudence. A species of mania by which an idea reproduced by the memory is associated and embodied by the imagination. This state of mind is sometimes called "delusion," or "waking dreams."

An attempt has been made to distinguish "hallucinations" from "illusions." The former are said to be dependent on the state of the intellectual organs, and the latter on that of those of sense. Ray, Med. Jur. § 99; 1 Beck, Med. Jur. 538, note. An instance is given of a temporary hallucination in the celebrated Ben Jonson, the poet. He told a friend of his that he had spent many a night in looking at his great toe, about which he had seen Turks and Tartans, Romans and Carthaginians, fight, in his imagination. 1 Colly. Lun. 34. If, instead of being temporary, this affection of his mind had been permanent, he would doubtless have been considered insane. See, on the subject of spectral illusions, Hibbert, Alderson, and Farrar's Essays; Scott on Demonology, etc.; 3 Bostock, Physiology, 91, 161; 1 Esquirol, Maladies Mentales, 159.

"The primary meaning of hallucination, as defined by Webster and Worcester, is, an error, a blunder, a mistake, a fallacy." Foster's, Exrs. v. Dickerson, 64 Vt. 250.

HAMESUCKEN.

In Scotch law. The crime of hamesucken consists in "the felonious seeking and invasion of a person in his dwelling house." 1 Hume, Hist. Eng. 312; Alis. Crim. Law, 199.

The mere breaking into a house, without personal violence, does not constitute the offense, nor does the violence without an entry with intent to commit an assault. It is the combination of both which completes the crime. It is necessary (1) that the invasion of the house should have proceeded from forethought malice; but it is sufficient if, from any illegal motive, the violence has been meditated, although it may not have proceeded from the desire of wreaking personal revenge, properly so called. The place where the assault was committed must have been the proper dwelling house of the party injured, and not a place of business, visit, or occasional residence. (3) The offense may be committed equally in the day as in the night, and not only by effraction of the building by actual force, but by an entry obtained by fraud, with the intention of inflicting personal violence, followed by its perpetration. (4) But, unless the injury to the person be of a grievous and material character, it is not hamesucken, though the other requisites to the crime have When this is the case, it is occurred. immaterial whether the violence be done lucri causa, or from personal spite.

The punishment of hamesucken in aggravated cases of injury is death; in cases of inferior atrocity, an arbitrary punishment. Alis. Crim. Law, c. 6; Ersk. Inst. 4. 9. 23.

This term was formerly used in England instead of the now modern term "burglary." 4 Bl. Comm. 223.

But in Hale's Pleas of the Crown it is said: "The common genus of offenses that comes under the name of 'hamsecken' is that which is usually called 'house breaking'; which sometimes comes under the common appellation of 'burglary,' whether committed in the day or night to the intent to commit felony; so that house breaking of this kind is of two natures." 1 Hale, P. C. 547; 22 Pick. (Mass.) 4.

HAND.

A measure of length, four inches long; used in ascertaining the height of horses.

HANDICRAFT.

Workshop Regulation Act, 1867, 30 & 31 V. c. 146, provides that "'handicraft' shall mean any manual labour exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing or otherwise adapting for sale any article" (s. 4). Making straw plait, by a child under the age of 8 years and who is being taught such plaiting, is a "handicraft" within this definition. Beadon v. Parrott, 40 L. J. M. 200; L. R. 6 Q. B. 718.

HANGING IN CHAINS.

In atrocious cases it was at one time usual, in England, for the court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice quite contrary to the Mosaic law. Deut. xxi. 23. Abolished by 4 & 5 Wm. IV. c. 26. Wharton.

HAPPEN.

See Occur.

The word "happen," in its strictest literal sense, signifies an unexpected event. It is also not uncommonly used as synonymous with "occur," "take place," "exist" and "happens to be." State v. Kuhl, 51 N. J. Law, 192.

The word "happen" [in an agreement with a railroad company not to call on them for damages that "may happen" to live animals shipped over the company's road] is defined by the words, "to come by chance, to fall out, to befall, to come unexpectedly." Sager v. Portsmouth, etc., R. Co., 31 Me. 239.

HARBORING.

Giving refuge, shelter or protection to; to furnish lodging for. People v. Lee, 237 Ill. 275.

HARD ROAD.

A gravel road is a "hard road" within the meaning of the Roads and Bridges Act. People v. Robeson, 253 Ill. 458.

HARDHEIDIS, OR HARDIES.

(Scotch). In old Scotch law. Lions; coins formerly of the value of three halfpence. 1 Pitc. Crim. Tr. pt. 1, p. 64, note.

HAS.

The proviso in section 59 of the Criminal Code, that "whoever has his regular place of business within such limits is not hereby required to suspend his business," was not intended to be limited to those who might have a business within the prescribed limits at the time the act was passed, but applies equally to all who may, in good faith, establish a place of business therein at any time when no camp meeting is in progress or being carried on. Meyers v. Baker, 120 Ill. 570.

HAVE.

A devise to children "who have issue," means who have issue when the will takes effect. Doe d. Burton v. White, 18 L. J. Ex. 59; 2 Ex. 797.

A devise of "the lands which I have," speaks from the death, and not the date of the will, and therefore includes lands acquired after the will (York v. Walker, 12 M. & W. 591); and on the balance of the authorities (and, semble), that larger interpretation would not be narrowed to the date of the will, if the phrase were "the lands which I now have." Castle v. Fox, L. R. 11 Eq. 542, 40 L. J. Ch. 302; Miles v. Miles, 35 Bea. 192, 35 L. J. Ch. 315, L. R. 1 Eq. 462; Cox v. Bennett, L. R. 6 Eq. 422; Wedgwood v. Denton, 40 L. J. Ch. 526, L. R. 12 Eq. 290; Saxton v. Saxton, 13 Ch. D. 359, 49 L. J. Ch. 128; Backwell v. Child, 1 Amb. 260; Struthers v. Struthers, 5 W. R. 809; Re Russell, 51 L. J. Ch. 401, 19 Ch. D. 432; per contra, Cole v. Scott, 19 L. J. Ch. 63, 1 M. & G. 518; Emuss v. Smith, 2 D. G. & S. 722.

HAVE ADJUDGED.

A statement in a justice's order that "we have adjudged" means "we do now adjudge." R. v. Moulden, or Maulden, 6 L. J. O. S. M. C. 76, 8 B. & C. 78; R. v. St. Nicholas, Leicester, 4 L. J. M. C. 97, 3 A. & E. 79, 4 N. & M. 624.

HAVING.

"Every person having manors," etc., may make wills, 34 H. 8, c. 5; "This word 'having' imports two things, sc. ownership and time of ownership; for he ought to have the land at the time of the making of his will, and the statute gives such person having, etc.," the authority thereby conferred. Butler & Baker's Case, 3 Rep. 30a.

The words "die without having issue" are equivalent to die without issue. Lee's Case, 1 Leon. 385; Cole v. Goble, 22 L. J. C. P. 148, 13 C. B. 445; Eastwood v. Lockwood, 36 L. J. Ch. 573, L. R. 3 Eq. 487.

The word "having" in a statute applying to "cities having, according to the last census, a population of eight hundred thousand" was held equivalent to "now has," and to be inapplicable to a city reaching that population at a date after the passing of the statute. Martin, J., in Stack v. Brooklyn, 150 N. Y. 341.

"The words, 'any person having charge or control of the train,' do not in my opinion, necessarily point to one person who is in charge of the whole train. Different duties in connection with different parts of the train may be assigned to different persons, and, in that case, each and all of those persons are charged with the conduct of the train; It has been suggested by one of the learned judges in the court of appeal that the duty having been committed to a great many persons, any one of whom might have performed it, therefore the person actually performing it was not 'in charge.' To my mind, these considerations are very immaterial. I think the statute points directly to the person having 'the charge or control of the train' as being that person who, at the time when

the negligent act is committed, has the duty laid upon him of performing that act with reasonable care." Lord Watson in McCord v. Charles Cammell & Co. [1896] A. C. 65. "It is the only sense in which any one has 'control' of a train, as it seems to me, within the meaning of the section [providing that where personal injury is caused to a workman by reason of the negligence of any person in the service of the employer who has the control or charge of a train upon a railway the workman or his representative shall have the same right of compensation against the employer as if he had not been in the service of the employer] namely, that he can make it move or not move as he pleases. therefore, you can detach that operation so as to free the engine-driver from all liability as soon as he has left the proper person to scotch, and let him go on, it seems to me, I confess, to follow that then the person so left to prevent that train from moving beyond the point at which it was intended to remain cannot be said to be otherwise than 'in charge or control' of the train." Lord Herschell, in McCord v. Charles Cammell & Co. (1896), A. C. 65.

HAVING A FAMILY.

Having a wife is "having a family" within the meaning of section 1 of the Homestead Act. Kitchell v. Burgwin, 21 Ill. 45.

HAVING A CONNECTED TITLE.

In Collins v. Smith, 18 Ill. 160, in discussing the meaning of the statute, "having a connected title, in law or equity, deducible of record," it was held that the statute had reference only to the source or beginning of title under which the party claims, and not to each link in the chain. It is there said (p. 163): "If the foundation, source or beginning of the title under which the party claims and enters is of record,—that is, by grant of the State, or the United States, or by grant of a public officer or other person authorized to sell for non-payment of

taxes, or on execution, or under order, judgment or decree of a court of record, —then it is deducible of record to every person who can connect himself with it" by competent evidence. Torrence v. Shedd, 156 Ill. 218-219.

HAWKER.

Abbott's Law Dictionary defines a "hawker" to be, "a person who practices carrying merchandise about from place to place for sale, as opposed to one who sells at an established shop. It is equivalent to peddler, the term now more commonly employed." The same author quotes from the case of Commonwealth v. Ober, 12 Cush. 493, as follows: "It is not, perhaps, essential to the idea, but it is generally understood from the word, that a hawker is one who not only carries goods for sale, but seeks for purchasers, either by outcry (which some lexicographers concede as intimated by the derivation of the word), or by attracting notice and attention to them as goods for sale by an actual exhibition or exposure of them, by placards or labels, or by a conventional signal, like the sound of a horn in the sale of fish." Tomlin "Hawkers, peddlers and petty chapmen" are "persons traveling from town to town with goods and merchandise." Bouvier defines peddlers, "Peddlers-persons who travel about the country with merchandise for the purpose of selling." Webster's definition is, "A traveling trader; one who carries small commodities about on his back, or in a cart or wagon, and sells them." mons v. City of Lewistown, 132 Ill. 383, 384.

A book agent traveling from house to house in a city soliciting subscriptions to certain publications, and taking orders therefor, to be paid on the subsequent delivery of the articles by a non-resident principal is not a "hawker," within the meaning of paragraph 41 of section 36 of the Cities and Villages Act of 1874, relating to the powers of cities and villages. Emmons v. Lewistown, 132 Ill. 385. See also Olney v. Todd, 47 Ill. App. 440.

HAY.

"Hay—grass cut and dried for fodder; grass prepared for preservation." Coen v. The Denver Mut. F. Ins. Co., 155 Ill. App. 336.

HE.

An instruction on the subject of the credibility of witnesses which in laying down the rule refers impersonally to "any witness," and "he," and similar pronouns, does not imply that different qualifications are to be applied to male and female witnesses where witnesses of both sexes have testified. Morello v. People, 226 Ill. 400.

The use of the masculine pronoun is not, as a rule of construction, conclusive that only males are embraced thereby. Berniaud v. Beecher, 71 Cal. 38.

HEAD OF ANY PRINCIPAL DE-PARTMENT.

Neither the fact that a city officer or employee is authorized to exercise control in the absence of the chief officer of the department, nor that he has charge of hiring men and expending public money and is next in position to his chief officer, nor that he has confidential and business relations with the chief officer in any branch of the city service, constitutes him a "head of a principal department." The People v. Kipley, 171 Ill. 76.

HEAD OF FAMILY.

See also Family.

A widow who keeps a boarding house, and who has residing with her as a member of the family a woman friend who does not pay board or rent, which widow also employs servants to do household work is the "head of a family," within the meaning of section 1 of the act of 1877 (J. & A. ¶5583), relating to the exemption of personal property from seizure on process. Race v. Oldridge, 90 Ill. 254.

Ordinarily, at least, where the wife lives with the husband, he must be re-

garded as the head of the family. If, in fact, he has not control of the family, and is not the head thereof, such fact must be shown by proof. The inference that he is the head must be rebutted by proof, and, in a penal action, that proof must clearly rebut such inference. Clinton v. Kidwell, 82 Ill. 429.

Where the evidence shows that the wife, although doing business in her own name and with her own money, has not, in fact, become the head of the family by taking exclusive charge of, managing and controlling the earnings and productions of the family, and the financial and business interests necessary to support and keep it together, she is not entitled to the benefit of the exemption laws as a head of a family. Farwell Co. v. Martin, 65 Ill. App. 57.

When the wife has, in fact, become the head of the family by taking exclusive charge and control of its earnings and the financial and business interests necessary to support and keep it together, although her husband resides with her, she is entitled to the benefit of the exemption laws as the head of the family. Temple v. Freed, 21 Ill. App. 239.

Upon the death of the father the mother becomes the head of the family, and is entitled to the services and earnings of her minor children. Buck v. Conlogue, 49 Ill. 391; Dufield v. Cross, 12 Ill. 397; Parmelee v. Smith, 21 Ill. 620; Bradley v. Sattler, 156 Ill. 608.

HEALTH.

That is injurious to health which makes sick people worse,—e. g. an offensive smell. Malton Loc. Bd. v. Malton Manure Co., 49 L. J. M. C. 90; 4 Ex. D. 302.

HEARING.

In legal contemplation, the word "hearing," when used in connection with the trial of a lawsuit, includes not only the listening to the examination of the witnesses but the entire judicial examination of the issues, both of law and of fact, between the parties. Glennon v. Britton,

155 Ill. 232. Consequently the word embraces the listening to the arguments of counsel on both sides if oral arguments are made and the reading of the arguments if written or printed arguments are presented; and, also, the consideration of these arguments in respect to both points of law and of fact. A less comprehensive meaning of the term would not give to parties such "hearing" as they are entitled to under the law. West Chicago Park Commissioners v. Riddle, 151 Ill. App. 505, 506.

HEAR OR HEARING.

"To 'hear' a cause or matter means, to hear and determine it. And 'unless there be something which by natural intendment, or otherwise, would cut down the meaning, I apprehend there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular court, mean that it is to be heard and finally disposed of there. And further, when they say that it is to be heard-(meaning heard and finally disposed of)-in a particular court, they mean, unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that court is to follow its ordinary procedure" (per Ld. Blackburn, Re Green, 51 L. J. Q. B. 44); or, as Selborne, L. C., put it in the same case, "Hearing" includes not only its necessary antecedents, but also its necessary or proper consequences. Ib. 40; nom. Green v. Penzance, 6 App. Ca. 657.

But sometimes to "hear" is not quite the same as to "hear and determine." Per Denman, C. J., R. v. Warwickshire Jus., 4 L. J. M. C. 62; 4 N. & M. 370; 2 A. & E. 768.

The word "hearing" has an established meaning as applicable to equity cases. It means the same thing in those cases that the word "trial" does in cases at law. Ackerly v. Vilas, 24 Wis. 171.

HEARD.

"The term 'heard,' as here used [a provision in the constitution that within

thirty days after judgment has been pronounced in a cause by a Department an order may be heard and decided in Bank] is taken from the practice in equity procedure and corresponds to the term 'trial' as used in cases at law. It signifies the consideration and determination of a cause by the court or by a judge as distinguished from trial of a cause which is a term more properly predicated of its determination by a jury." Niles v. Edwards, 95 Cal. 43, citing 3 Bl. Com. 451, 453; Akerly v. Vilas, 24 Wls. 171; 1 Am. Rep. 166; Merritt v. Portchester, 8 Hun. 45.

HEARD AND FINALLY DETERMINED.

A provision that certain matters shall be "heard and finally determined" by an inferior court, does not oust the supervision of the high court. R. v. Plowright, 3 Mod. 95: 2 Hawk. P. C., c. 27, s. 23; cited Maxwell, 153.

HEGIRA.

The account of time used by the Turks and Arabians, who begin their computation of time from the day that Mahomet was compelled to escape from Mecca,—Friday, July 16, A. D. 622. Wharton.

HEIFER.

A young cow which has not had a calf; a beast of this kind two years and a half old was held to be improperly described in the indictment as a cow. 2 East, P. C. 616; 1 Leach, C. C. 105.

A female calf of the bovine species, from the end of the first year, until she has had a calf. Freeman v. Carpenter, 10 Vt. 435.

HEIRLOOM.

Heir-lome. [From Sax. heier, heir, and leoma, a limb, or member; L. Lat. hæreditarium, principalium.] In English law. A personal chattel which goes by special custom to the heir, along with the inheritance, and not to the executor or administrator of the last proprietor.

Literally, a limb or member of the inheritance. 1 Williams on Exec. 606.

The old authorities generally confine the application of this term to articles of household furniture, or "dead chattels moveable." Bro. Abr. Discent, pl. 43. Termes de la Ley. But Lord Coke mentions fish in a pond, deer in a park, and doves in a dovehouse, as chattels which go with the inheritance. Co. Litt. 8 a. Spelman defines an heir-loom to be "any utensil of the stronger or more ponderous kind, which is not easily separated from a house, and therefore, by the custom of some places, passes to the heir as a member of the inheritance:" (omne utensile robustius quod ab ædibus non facile revellitur, ideoque, ex more quorundam locorum, ad hæredem transit tanquam membrum hæreditatis.) And Blackstone observes that heir-looms are generally such things as cannot be taken away without damaging or dismembering the freehold. 2 Bl. Com. 427. But in modern law, they are clearly distinguished from fixtures. 1 Williams' Exec. 607. 2 Kent's Com. 343. Charters or deeds relating to the inheritance, are in the nature of heir-looms, and follow the land to which they relate. Williams' Exec. 609.

"The meaning of the word standing alone, without any explanatory context, in reference to chattels is gross (I am not speaking of fixtures), is the same in law and in equity. Its primary meaning is chattels which on the death of the ancestor pass to the heir. These are of The first is where they two classes. pass by special custom, such as the best bed and the like. The second is where the chattels, to use the old phrase, savour of the inheritance; that is, are directly connected with it. This class includes title-deeds and the chest or box where they are usually kept, the patent creating a dignity, the garter and collar of a knight, an ancient horn where the tenure is by cornage, as in the case of the Pusey horn, and the ancient jewels of the Crown. As the custom has to be proved strictly, little or nothing is heard at the present day of the first class * * I refer * * * to Co. Litt.

18 b and 1 Williams on Executors, 9th

is a secondary sense in which the term

'heirlooms' is used; that is, where chat-

tels are settled by deed or will or other-

wise, vesting them in trustees upon trusts

declared whereby they are limited to go

along with corporeal or incorporeal

hereditaments, so far as the rules of law

or equity will permit. This second sense

is, generally speaking, the sense in which

the term 'heirlooms' is employed popu-

larly." Hill v. Hill (1897), 1 Q. B. 494.

HEIR PRESUMPTIVE.

would be entitled to the inheritance, but

whose rights may be defeated by the

contingency of some nearer heir being

born. 2 Bl. Comm. 208. In Louisiana, the presumptive heir is he who is the

nearest relation of the deceased capable

him before the decease of the person

from whom he is to inherit, as well as

after the opening of the succession, until

he has accepted or renounced it. Civ.

HEIRS.

See also Children; Issue; Revert to My

Estate; and subsequent heads dealing

with phrases in which the word

For convenience of reference, the fol-

lowing cases are cited as bearing upon

and explaining the meaning and use of

the word heirs: Van Olinder v. Carpen-

ter, 127 Ill. 42; Merrill v. Atkin, 59 Ill.

19; Ebey v. Adams, 135 Ill. 80; Akers v.

Clark, 184 Ill. 136; Riggin v. Love, 72

Ill. 553; Hobbie v. Ogden, 178 Ill. 357;

Summers v. Smith, 127 Ill. 645; Bland v.

Bland, 103 Ill. 11; Best v. Farris, 21 Ill.

App. 49; Glover v. Condell, 163 Ill. 566;

Alexander v. Northwestern, 126 Ill. 558.

62 Ill. 422; Harris v. Rhodes, 130 Ill.

One who inherits. Richards v. Miller.

This quality is given to

One who, in the present circumstances,

.

But there

ed. p. 633, et seq.

of inheriting.

Code La. art. 876.

"heir" is used.

In General.

The word "heirs," used in a will, is to

be given its technical meaning unless it

is plain from the whole will that it was

not the intention of the testator so to use

One who, upon the death of another,

acquires or succeeds to his estate by right

of blood and by operation of law; he upon

whom the law casts the estate immedi-

ately upon the death of the ancestor.

An heir is one who takes an estate and

land from another by descent, as distin-

guished from a devisee, who takes by will.

Richards v. Miller, 62 Ill. 422; Harris v.

The word "heirs" is not always given

its strict legal signification. Where the

word is used in such a way as to clearly

indicate that it is intended to mean chil-

dren, such meaning will be given to it in

order to carry out the testator's intention.

Fishback v. Joesting, 183 Ill. 463; Smith v. Kimbell, 153 Ill. 369; Kalies v. Ewert,

248 Ill. 615; Andrews v. Applegate, 223 Ill. 538; Summers v. Smith, 127 Ill. 645;

Strain v. Sweeny, 163 Ill. 609; Jones v.

J., says: "We have no doubt that the word 'heirs' may be construed to mean

children, where it is plain that the tes-

true that it must clearly appear that the

word was used in a different sense from

that which the law attaches to it. In the

case just cited. Judge Elliot quotes from

Lord Redesdale, in Jesson v. Wright, 2

Bligh. (H. L. Cas.) 56, the following lan-

words shall have their legal effect, un-

less, from subsequent inconsistent words,

it is very clear that the testator meant

otherwise." Also, from Lord Denman, in

nical words, or words of known legal im-

port, must have their legal effect, even

Doe v. Gallini, 5 B. & Ad. 621:

"The rule is, that the technical

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It is

tator employed it in that sense."

In Sniver v. Mann, 99 Ind. 190, Elliot,

Butterfield v. Sawyer, 187 Ill. 602.

it. Stisser v. Stisser, 235 Ill. 211.

Blackstone's Definition.

"Devisee" Distinguished.

Rhodes, 130 Ill. App. 237.

Miller, 283 Ill. 348.

guage:

671

As Denoting Children or Issue.

Will.

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App. 237.

though the testator uses inconsistent words, unless these inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical words in their proper sense." Griswold v. Hicks et al., 132 Ill. 502.

If it is apparent from a reading of the will that the testator used the words "heirs," "issue" and "children" interchangeably or synonymously, the court is warranted in construing them in like manner, so as to carry out the testator's intention. Gannon v. Peterson, 193 Ill. 372; Butler v. Huestis, 68 Ill. 594; Leiter v. Sheppard, 85 Ill. 242. The words "heirs" and "issue" are to be given their technical meaning, unless, reading the entire will together, it is plain it was not the intention of the testator to so use them. Vangleson v. Henderson, 150 Ill. 119. The intention must be sought from the language of the will. Deemer v. Kessinger, 206 Ill. 57. The force or meaning of words must arise from the connection in which they are used. Dick v. Ricker, 222 Ill. 413; Stisser v. Stisser, 235 Ill. 210, 211.

In a clause in a will which provides that the property shall be divided when the youngest heir shall become of age, the word heir means child, and a partition may be had when the youngest child is of age, although one of the devisees may have died, leaving a minor heir. Bland v. Bland, 103 Ill. 17.

It has frequently been held that the word "heirs" in a will does not necessarily have a fixed meaning. It may mean children, it may also, where there are no children, mean some other one class of heirs (not including all the heirs), if the context of the entire will plainly shows such to have been the purpose of the testator. In the construction of a will greater latitude is allowed than in the construction of a deed (Webbe v. Webbe, 234, Ill. 442), and while, as above stated, the technical meaning of the word is the one which prima facie should prevail, yet such meaning will not be given effect to the extent of defeating an obvious general intention of the testator. Blackmore v. Blackmore, 187 Ill. 102; Johnson v.

Askey, 190 Ill. 58. "Heirs" and "heirsat-law" are in a legal sense the same. Smith v. Winsor, 239 Ill. 577.

"The testator gave his property to his wife and child or children, or their heirs, who might be living at his death, but if he and his wife and his child or children should all die and there should be no heirs of the children, then it should go to the others. He was a merchant, and used the natural language of a business man in the provision respecting heirs of his child or children. He evidently meant children by the word 'heirs,' and it is to be so construed." Fishback v. Joesting, 183 Ill. 466.

"By clause 9 the testator expressed his will that if any of his children died leaving no heirs, the legacy of such child should go to the testator. The word heirs is used twice in the ninth clause, once referring to the devisee and once to the testator. We are of opinion 'heirs,' as here used, means children in both instances." Wilson v. Wilson, 261 Ill. 177.

The word "heirs," as used in a will, will be construed to mean "children" when that is the evident intention of the testator. The word is not always given a strict legal significance in the construction of wills, and if the word is used in such a way by a testator as clearly to indicate that it is intended to mean."children," it will be given such meaning. It is also held where words in one part of a will have been given a definite and fixed meaning by the testator, the same meaning will be given to the same words used in a later clause of the will, unless a contrary intention is expressed. Lockhart v. Lockhart, 56 N. C. 205; Tomlinson v. Nickell, 24 W. Va. 148; Ireland v. Parmenter, 48 Mich. 631; State v. Ewing, 17 Ind. 68; Bradsby v. Wallace, 202 Ill. 239; Winter v. Dibble, 251 Ill. 217; Dunshee v. Dunshee, 251 Ill. 414, 415.

The sense in which the word "heir" is used may be explained by the context. At the common law, if land was given to one and his heirs if he had heirs of his body, and if he should die without heirs of his body it should revert to the donor, the donee had an estate tail. 1 Sheppard's Touchstone, 103. It is not necessary

that particular language should be used to manifest the intention of a testator, and a devise to a person and his heirs with a limitation over in case he die without issue confers an estate tail, on the ground that the testator has used the word "heirs" in the qualified and restricted sense of heirs of the body. Jarman states the law applicable to such a case in the following language: "Where real estate is devised over in default of heirs of the first devisee, and the ulterior devise stands related to the prior devisee so as to be in the course of descent from him, whether in the lineal or collateral line and however remote, as the prior devisee in that case could not die without heirs while the devisee over exists, the word 'heirs' is construed to mean heirs of the body, and accordingly the estate of the first devisee, by the effect of the devise over, is restricted to an estate tail, and the estate of the devisee over becomes a remainder expectant on that estate." 3 Jarman on Wills,-5th ed.-96; Kolmer v. Miles, 270 Ill. 24, 25.

The word "heirs" in a deed will not be construed as meaning "children" where there is nothing in the deed to indicate that such word "heirs" was to have any other than its technical meaning. Kepler v. Castle, 281 Ill. 444.

Explained by the Context.

The sense in which the word "heir" is used may be explained by the context. At the common law, if land was given to one and his heirs if he had heirs of his body, and if he should die without heirs of his body it should revert to the donor. the donee had an estate tail. It is not necessary that particular language should be used to manifest the intention of a testator, and a devise to a person and his heirs with a limitation over in case he die without issue confers an estate tail. on the ground that the testator has used the word "heirs" in the qualified and restricted sense of heirs of the body. Where real estate is devised over in default of heirs of the first devisee so as to be in the course of descent from him, whether in the lineal or collateral line and however remote, as the prior devisee in that case could not die without heirs while the devisee over exists, the word "heir" is construed to mean heirs of the body, and accordingly the estate of the first devisee, by the effect of the devise over, is restricted to an estate tail, and the estate of the devisee over becomes a remainder expectant on that estate. Kolmer v. Miles, 270 Ill. 24-5.

As Denoting Successors by Intestacy.

He who is born or begotten in lawful wedlock, and upon whom the law casts the estate in lands, tenements, or hereditaments immediately upon the death of the ancestor. Butterfield v. Sawyer, 187 Ill. 602; Walker v. Walker, 283 Ill. 11.

A person's "heirs" are those "upon whom the law casts the estate immediately upon the death of the ancestor." Jones v. Miller, 283 Ill. 348.

The rule is, that when the word "heir" or "heirs" is used in a will, and there is nothing in the context explaining or controlling its use, or showing a different intention on the part of the testator, it must be interpreted according to its strict and technical import. Thus construed, the word "heirs" includes and designates the persons upon whom the law would cast the inheritance in case of intestacy, and whether few or many, all are comprehended in the single word "heirs." Rawson v. Rawson, 52 Ill. 66; Ryan et al. v. Allen, 120 Ill. 654; Ewing v. Barnes, 156 Ill. 67; Adams v. Akerlund, 168 Ill. 638, 639; Alexander et al. v. Masonic Aid Association, 126 Ill. 562; Richards v. Miller, 62 Ill. 422, 424; Kellett v. Shepard, 139 Ill. 433; Smith v. Kimbell, 153 Ill. 375; Kelley et al. v. Vigas et al., 112 Ill. 245. See, also, Thomas v. Miller, 161 Meadowcroft v. Winnebago Ill. 73; County, 181 Ill. 504; Ahlfield v. Curtis, 229 Ill. 142; Aetna, etc., Co. v. Hoppin, 249 Ill. 412; Gannon v. Peterson, 193 Ill. 372; Winchell v. Winchell, 259 Ill. 474; Black v. Jones, 264 Ill. 555; Lawwill v. Lawwill, 29 Ill. App. 647; Auger v. Tatham, 92 Ill. App. 199, 200.

It is frequently the case that the words "heirs-at-law" are not used in their technical sense but are used to designate a more restricted class than heirs generally. There is, however, always a strong legal presumption that the word "heirs"

is used in its technical sense, as denoting the whole of the indefinite line of inheritable succession. In Winter v. Dibble, 251 Ill. 200, in discussing the rule in Shelley's case, we said: "This is a rule of law and not of construction, and the use of the word 'heirs,' unless it clearly appears from the instrument to have been used in a sense different from its strict legal meaning, is conclusive of the intention. Whenever it is made to appear by the language of the instrument that the words of inheritance were not used according to their legal import, to include the whole line of inheritable blood of the ancestor and to make him the stock of descent, but have been used in a restrictive and untechnical sense, to designate individuals to whom a distinct estate is given and from whom, as its origin, the descent is thereafter to be derived, the rule will be excluded." This is only one of many similar expressions which might be quoted as stating the doctrine that unless it clearly appears that the word "heirs" has been used in an unusual sense it will be given its technical meaning. Carpenter v. Hubbard, 263 Ill. 581, 582.

The word "heirs" in the sentence, "I give, devise and bequeath unto my daughter, all my real estate, then to her heirs," is used in its legal, technical sense, and means all those persons who would succeed to the estate in case of intestacy. Ahlfield v. Curtis, 229 III. 142.

The word "heir" has a technical signification, and we must presume that, in the policy, the term "legal heirs" was used in its strict and primary sense, there being nothing in the context to show that it was used in any other sense. Jacob says, "heir is he who succeeds, by descent, to lands, tenements and hereditaments, being an estate of inheritance." We know of no respectable authority, and venture there is none, holding that one entitled to dower or an interest in the nature of dower, or any allowance of personal property only, because of the survivorship of the husband or wife, is held to be included within the legal definition of "heir." Nor is the distinction between the word "widow" and the word "heir" less marked in common parlance. No one, having children, speaks of his wife, in contemplation of her survivorship, as his "heir"; but it is believed it is universal that she is referred to as "widow," and the children as "heirs." Gauch v. St. Louis M. L. Ins. Co., 88 Ill. 256.

A devise to "heirs" simplicter is per stirpes. The term designates a class only. It is composed of those upon whom the statute would cast the inheritance if there were no will. And since, to ascertain who they are, resort must be had to the statute, it will determine also the proportion in which they take, not, however, because the devise is to a class whose members are to be thus ascertained, but because it is to such a class simpliciter. The sense of the rule is, that as in such case the will itself does not indicate the proportion, it gives just as the statute would give without the will, and therefore the devisees must take just as they would take under the statute without the will; which is per stirpes. Best v. Farris and Wall, 21 Ill. App. 51.

The term is the appropriate expression when those on whom the law casts the estate are spoken of. Warnecke v. Lembca, 71 Ill. 94.

As a Word of Limitation.

The term "heirs" is not always used with the same meaning. It may be used as a word of limitation or as a word of purchase, according to the context. Dick v. Ricker, 222 Ill. 413; Seymour v. Bowles, 172 Ill. 521; Miller v. Mowers, 227 Ill. 402.

The word "heirs" is a word of limitation where it is not used to describe individuals but to designate heirs generally or the whole line of heirs in succession. It is not to be construed as a word of purchase unless there are other controlling words showing an intention of that kind by the person using it, and if it is used as a word of limitation, its effect is to mark out the estate granted. Hobbie v. Ogden, 178 Ill. 357; Davis v. Sturgeon, 198 Ill. 520; Ortmayer v. Elcock, 225 Ill. 345.

Where the word "heirs" is used in its general legal sense, it is, under the rule

in Shelley's Case, a word of limitation, and no intention of a testator, however clearly expressed, can change it into a word of purchase. Rissman v. Wierth, 220 Ill. 185.

"By the fourth clause of the will, the lands in question in this suit were devised to the complainant and 'his heirs.' There is no pretence or ground for pretence that the word 'heirs' was used in the devise in any other than its ordinary meaning,—that is to say, as descriptive of those persons, whoever they may be, upon whom the law, upon the death of the ancestor intestate, would cast the inheritance, thus including all possible heirs, to take in succession, from generation to generation, under the name of heirs of the ancestor. Such being the terms of the devise, by the rule known as the rule in Shelly's case, which we have repeatedly held is in force in this State, the estate devised to the complainant must be held to be in fee. This rule and its application have been so fully discussed and settled by the repeated decisions of this court that further consideration of it is quite unnecessary, it being sufficient, on this point, to merely refer to the cases in which the rule has been recognized and applied: Baker v. Scott, 62 Ill. 86; Brislain v. Wilson, 63 Ill. 173; Beacroft v. Strawn, 67 Ill. 28; Butler v. Huestis, 68 Ill. 594; Wicker v. Ray, 118 Ill. 472; Ryan v. Allen, 120 Ill. 648; Carpenter v. Van Olinder, 127 Ill. 42; Hageman v. Hageman, 129 Ill. 164; Griswold v. Hicks, 132 Ill. 494; Fowler v. Black, 136 Ill. 363; Wolfer v. Hemmer, 144 Ill. 554; Vangieson v. Henderson, 150 Ill. 119.

"This rule has become a rule of property, and it is held to override even the expressed intention of the testator that it shall not operate, or, rather, as was said in Fowler v. Black, supra, "it raises a conclusive presumption that where a devise or grant is made to a man and his heirs, the testator or grantor intends to use the word 'heirs' as a word of limitation, and not of purchase." It is doubtless the ordinary rule that in construing a will the primary consideration is the ascertainment of the intention of the tes-

tator; that for the purpose of ascertaining such intention all parts of the will and all of its language are to be considered, and that when such intention is once ascertained it will be given effect. Still, a recognized exception to the rule is made where the expressed intention of the testator is violative of a settled rule of law. Thus, where a devise is made to a man and his heirs, neither the expressed intention that the devise shall have an estate for his life and no longer; nor, secondly, that he shall have only an estate for life in the premises, and after his decease it shall go to the heirs of his body, and, in default of such heirs, vest in the person next in remainder, and that the devisee shall have no power to defeat the intention of the testator; nor, thirdly, that the devisee shall be a tenant for life and no longer, and that it shall not be in his power to sell, dispose of or make away with any part of the premises,-will change the word 'heirs' into a word of purchase. I Preston on Estates, 363; Carpenter v. Van Olinder, supra; Fowler v. Black, supra." Ewing v. Barnes, 156 Ill. 67, 68, 69; Davis v. Sturgeon, 198 Ill. 522

When to the word "heirs" are added words limiting its meaning to one or more persons who are to take and constitute a new source of inheritance or stock of descent—that is, when the words used designate the remainder men to take after the expiration of the life estate as the person or persons who at that time answer the description of heirs, and limit the estate in remainder to such persons and their heirs—the rule in Shelly's Case does not apply, and the estate subsequent to the life estate takes effect as a contingent remainder to the heirs of the life tenant, as purchasers. Aetna, etc., Co. v. Hoppin, 249 Ill. 412.

As Synonymous with "Legatee" or "Devisee."

"In common speech the word (heirs) is frequently used to indicate those who come in any manner to the ownership of any property by reason of the death of the owner; the persons upon whom property devolves on the death of another,

either by law or by will; the persons entitled by will or otherwise to share in the estates of decedents." (21 Cyc. 416.) "The word 'heir' is technically distinguished from 'legatee' or 'devisee,' but it is sometimes used 'in its more general sense, as indicating the person upon whom property devolves on the death of another;' and hence when the intention is clear, the word may sometimes be treated as equivalent to legatee or devisee." Taylor v. Perkins, 72 N. H. 349; Union Trust Co. v. Shoemaker, 172 Ill. App. 407, 408.

Roman or Civil Law.

Under the Roman and modern civil law the term has a more extended signification than at common law, and is applied to all persons entitled to succeed to the estate of one deceased, whether by act of the party or by operation of law. Butterfield v. Sawyer, 187 III. 603; Adams v. Akerlund, 168 III. 638, 639.

"The term 'heir' has a very different signification at common law from what it has in those States and countries which have adopted the civil law. In the latter, the term applies to all persons who are called to the succession, whether by the act of the party or by operation of law. The person who is created universal successor by a will is called the testamentary heir, and the next of kin by blood is, in cases of intestacy, called the heir-at-law or heir by intestacy." 1 Brown on Civil Law 344; Story on Conflict of Laws, 508; Meadowcroft v. Winnebago County, 181 Ill. 509, 510.

Status at Time of Death.

Ordinarily, the words "heirs," or "heirs at law," are used to designate those persons who answer this description at the death of the testator. Hence, where the word occurs in a will, it will be held to apply to those who are heirs of the testator at his death, unless the intention of the testator to refer to those, who shall be his heirs at a period subsequent to his death, is plainly manifested in the will. This construction or definition is not changed by the fact, that a life estate may precede the bequest to the heirs at law, nor by the circumstance that the

quest to the heirs is contingent on an event that may or may not happen. 2 Jarm. on Wills, 672, R. & T. 5th Am. Ed.; 2 Wms. on Ex'ors, 1211, 6th Am. Ed.; Kellett v. Shepard et al., 139 Ill. 442; Smith v. Kimbell, 153 Ill. 375; Burton v. Gagnon, 180 Ill. 355; Harrison v. Weatherby, 180 Ill. 443; Clark v. Shawen, 190 Ill. 54; Hobbie v. Ogden, 72 Ill. App. 254, 255; Minot v. Tappan, 122 Mass. 523; Dove v. Torr, 128 Mass. 38.

Under Particular Circumstances—Adopted Children.

The word "heirs" will include all who stand in a relation to the ancestor that will entitle them to inherit upon his This would include an adopted death. child, for the statute puts him on an equality with children by birth for the purpose of inheriting from the adopting parent. In other respects than the right of inheriting from the adopting parent the adopted is unlike children by birth. By adoption he acquires no right to inherit from anyone else than the adopting parent. Keegan v. Geraghty, 101 Ill. 26. In that case it was said adoption creates an artificial relation between the parties to the transaction. "As we construe the statute, as between the parties to the transaction the adopted child is deemed, for the purpose of inheritance from the adoptive parents, their child, the same as if he had been born to them in lawful wedlock." It has been said in a number of cases that an adopted child is regarded, in law, as a child only for the purpose of inheritance from the adopting parent, and not the child, in fact, of such adopting parent. Schaefer v. Eneu, 54 Pa. St. 304; Commonwealth v. Noncrede, 32 Pa. St. 389; Hockaday v. Lynn, 200 Mo. 456, 118 Am. St. 672. In McGunnigle v. Mc-Kee, 77 Pa. St. 81, the devise was to the testator's son, Thomas, "and his heirs and assigns," with a limitation over in case the son "should die without an heir." The son left an illegitimate daughter, who had been legitimatized before his death by special act of the legislature, which provided that she should have all the rights and privileges and be capable of inheriting any estate as fully

as if she had been born in lawful wedlock. The court held that the legitimatized daughter was an heir and entitled to the property. In Johnston's Appeal, 88 Pa. St. 346, property was devised to trustees in trust for a son during his life and at his death to be assigned and conveyed to such person or persons as would be entitled to it by law if he had died seized of a fee simple estate. It was held an adopted child took the property. In all three of the cases referred to, the adopted child filled the description of "heir" as used in the deed or will, and the grantor or testator left it to the law to determine who the heir was at the death of the first taker. Walla v. Noland, 246 Ill. 545, 546.

- Evidence Act.

"If the word 'heir' in the statute on evidence is to be given the meaning which it bears at common law, as the person entitled to succeed to real estate in case of intestacy, then where a plaintiff sues as an heir of real estate, or as a legatee of personal estate, an adverse party cannot testify; but if the subject-matter of the action is personal estate, which descended to the plaintiff under the statute, an adverse party may testify. The word "heir" imports succession to property by death, and in common speech is frequently used to designate one who succeeds to any kind of property on the death of the owner. The word is so used in judicial decisions. In Sturgis v. Ewing, 18 Ill. 176, 181, Judge Caton said: 'By the forty-sixth section of the Statute of Wills, the widow of an intestate who dies, leaving no child or the descendants of a child. is made the heir of her deceased husband, and as such is entitled to receive one-half of all his real and personal estate after the payment of his debts.' In Cross v. Carey, 25 Ill. 461, where all of the personal estate of her deceased husband descended to the widow under the Statute of Wills, Judge Walker called the widow 'the heir of her husband.' We think that the word 'heir' in the statute on evidence was intended to have a broader signification, so as to mean the heir at law in relation to real estate, and those persons

who are entitled under the statute of descents, in relation to the personal estate." Moore v. Botto, 159 Ill. App. 325.

- Heirs of Heirs.

Under the word heirs are comprehended the heirs of heirs, ad infinitum. Bouvier's Law Dic., where the authorities are cited. Merrill et al. v. Atkin, 59 Ill. 21.

- Natural.

The word "natural" means produced in the course of nature, and when used to qualify the word "heirs" we think it means such heirs as are born to a person in the course of nature as distinguished from collaterals, who are heirs by virtue of legislative provisions,—and this was the view taken in Smith v. Pendall, 19 Conn. 107, and Millar v. Churchill, 78 N. C. 372. No one answers to the description of natural heirs except issue or children. Tea v. Millen, 257 Ill. 628.

- "Next," "Near," "Nearest."

When there are a number of persons falling within the designation of "heirs," -that is, having the right to take by inheritance from the ancestor,-although they may not take equally as to amount, the law furnishes no means of determining which one or more of the common class is or are "nearest" in the quality or right of inheritance. The word "nearest" like "next" or "first" prefixed to the term "heirs" or "heir," without the use of other words of limitation on the devise to the heirs, will not vary the effect of the devise. The nearest heirs are all those persons upon whom the law would cast the inheritance in the first instance, upon the death of the ancestor intestate, and there can be no other heirs. Those who are heirs are therefore necessarily nearest heirs, and, conversely, nearest heirs can be no other than heirs generally, and must include all those who stand in the same relation to the ancestor in respect of the right of inheritance. Jarman on Wills, 326, and citations Ryan et al. v. Allen, 120 Ill. 654.

- Next of Kin.

"Is the husband an heir? The statute unquestionably makes him such when it

says upon certain contingencies, one-half of the real estate of the wife shall descend to him as his exclusive estate forever. An heir is one who inherits. He takes an estate and land from another by descent, as distinguished from a devisee, who takes by a will. He is the one upon whom the law casts the estate immediately upon the death. Can we according to the rules of interpretation and with nothing in the context to aid, construe the words 'heir at law' in the popular sense? Can we say the next of kin were intended? To do so would be a bold advance toward overturning established rules." Harris v. Rhodes, 130 Ill. App. 237.

- Use of Singular Number.

In the first clause of the will the gift is to "Mary Ann Drayton, her heir and assigns." The word "heir" here has the same meaning as though it were "heirs." It matters not that the devise expressed "heir" in the singular, "while the statute heirs in the given instance are in the plural; for 'heir' is a collective term, and may stand for any number of persons who happen to fulfill the description." Schouler on Wills, sec. 548; Lambe v. Drayton, 182 Ill. 112.

HEIRS AND ASSIGNS.

Where the expression "heirs and assigns forever" in a will uses the word "heirs" in its strict legal sense, the devisee takes, under the rule in Shelly's Case, a fee simple estate. Rissman v. Wierth, 220 Ill. 185.

Where an estate is devised to a person without the use of the words "heirs and assigns," the devisees will take in fee simple, unless the estate is limited by express words in a subsequent part of the will or by construction or operation of law, but where the words express a gift to the devisee alone, and not to her heirs and assigns, and are then followed by words which limit her estate to life, then the estate conveyed or devised would be reduced accordingly. King v. King, 215 Ill. 100; Gruenewald v. Neu, 215 Ill. 132; Lambe v. Drayton, 182 Ill. 110; Wallace v. Bozarth, 123 Ill. App. 625.

A will devising property and adding to the granting clause the words "and to their heirs and assigns forever" makes what the common law would constitute a good and perfect conveyance in fee simple. Gannon v. Peterson, 193 III. 378.

Where an estate is devised to A without the use of the words, "heirs and assigns," A will take a fee simple estate of inheritance, unless the will or instrument of conveyance reduces the estate to an estate less than a fee by express words, or by construction or operation of law. Wolfer v. Hemmer, 144 Ill. 554; Saeger v. Bode, 181 Ill. 514; Smith v. Kimbell, 153 Ill. 308; Turner v. Hause, 199 Ill. 469.

HEIRS-AT-LAW.

The persons appointed by law to succeed to an estate, as in case of intestacy. Richards v. Miller, 62 Ill. 422; Rawson v. Rawson, 52 Ill. 62.

The term is commonly and rightfully used to indicate the heirs at common law—the next of kin by blood. Black v. Jones, 264 Ill. 556.

The words "heirs-at-law," in a bequest of personal estate, or in a policy of life insurance, used to designate the beneficiaries, unexplained by the context, will be held to mean the persons appointed by law to succeed to the estate of the testator or assured in case of intestacy. This rule of construction will not be affected by the mere fact that other and independent provision has been made for some of the same beneficiaries. Alexander v. Masonic Aid Ass'n, 126 Ill. 562.

A widow is an heir-at-law of her deceased husband. Rawson v. Rawson, 52 Ill. 62.

Heirship is not created by contract, but by law only. Persons who inherit are heirs-at-law—not heirs by contract. Hudnall v. Ham, 183 Ill. 498.

The term "heir-at-law" includes persons in the ascending as well as in the descending line, and may also include collaterals. Bates v. Gillett, 132 Ill. 297.

Where a person takes a certificate of life insurance in a benevolent society, payable to his "devisees or heirs-at-law," if he executes a will bequeathing the fund

to a person or persons therein named, such person or persons will be entitled to the same on his death; but if he dies intestate, without issue, the fund will go to his widow, if any, to the exclusion of his next of kin, or father, mother, and brothers and sisters. Alexander v. Northwestern, etc., Ass'n, 126 Ill. 566.

The husband of the daughter of a testator is one of the "heirs-at-law" of the daughter under a will by which the testator devises his personalty, upon the death of his wife and another, life annuities, to his children in equal parts, if they be living, and if not, to their heirs-at-law, and specifically provides that the share going to the heirs-at-law shall be divided among such heirs according to the Statute of Descent in the State of Illinois. Walker v. Walker, 283 Ill. 11.

HEIRS BY HER PRESENT HUS-BAND.

A deed of a tract of land to A, a married woman, "and her heirs by her present husband, B," conveyed to her what would have been an estate tail by the common law, but under our statute an estate for her life, only, with remainder in fee to her heirs, by B, or those to whom the estate was immediately limited. The words, "to her heirs by her present husband, B," meant, by the issue of her body by her then present husband begotten. Lehndorf v. Cope, 122 Ill. 330.

HEIRS, EXECUTORS AND ADMIN-ISTRATORS.

The words "heirs, executors and administrators" in a covenant are surplusage, the heir being bound for all demands against his ancestor to the extent of the property inherited, whether manifested by covenants or otherwise. Baker v. Hunt, 40 Ill. 265.

HEIRS GENERAL.

He upon whom the law casts the realty of an intestate. Butterfield v. Sawyer, 187 Ill. 602.

HEIRS GENERALLY.

The expression "heirs generally" used in a deed creating a contingent remainder, do not mean "collateral heirs," in the absence of warrant in the deed for so construing the words. Butterfield v. Sawyer, 187 Ill. 602.

An adopted child is within the meaning of a deed granting an estate to one for life with contingent remainder to "the heirs generally of the said Adeline Butterfield." Butterfield v. Sawyer, 187 Ill. 601.

HEIRS OF HER OWN.

A will devising property to others in case a devisee dies "leaving no heirs of her own" means, by the expression "heirs of her own," a child or children of such devisee. Ahlfield v. Curtis, 229 Ill. 142.

HEIRS OF MY BLOOD.

Where a testator declared it to be his express will and intention that the estate should not go to strangers to his blood by any laws of descent of this or any other State, and that the estate devised should be descendible only to the heirs of his children of his blood, he meant nothing but their lineal heirs, since no other heirs could be heirs of the testator's blood. Kolmer v. Miles, 270 Ill. 24.

HEIRS OF THE BODY.

There is no difference, in the effect of a deed, between a grant to one "and the heirs of his body begotten" and to one and "his bodily heirs." Coogan v. Jones, 278 Ill. 279.

A deed to a person "and her bodily heirs," subject to a life estate in the grantor, conveys only a life estate to the grantee. Coogan v. Jones, 278 Ill. 279.

Words of Limitation.

When used as words of limitation, the words "heirs of the body" indicate all those persons who, on the death of the ancestor, succeed to the estate from gen-

eration to generation. Aetna, etc., Co. v. Hoppin, 249 Ill. 412.

Words of Purchase.

Where the words "heirs of the body" are so limited as not to include the whole line of inheritable succession, but only to designate the individuals who are, upon the death of the ancestor, to succeed to the estate and who are themselves to constitute the course of future descent, they are words of purchase. Aetna, etc., Co. v. Hoppin, 249 Ill. 412.

Mr. Kent, in his Commentaries, states numerous cases in which in a devise the words "heirs," or "heirs of the body," have been taken to be words of purchase, and not of limitation, in opposition to the rule in Shelly's case, and gives this apposite illustration: Where the testator annexes words of explanation to the word heirs, as to the heirs of A now living, showing thereby that he meant by the word "heirs" a mere descriptio personarum, or a specific designation of individuals. 4 Kent 221; Butler v. Huestis, 68 Ill. 601.

Children.

It is always competent to show that the words "heirs" or "heirs of the body" are used in a will as synonymous with "children," and for this purpose every part of the will is to be taken into consideration. Summers v. Smith, 127 Ill. 651.

HELD.

As a technical term, "held" embraces two ideas—that of actual possession of some subject of dominion or property, and that of being invested with legal title or right to hold or claim such possession. Witsell v. Charleston, 7 S. C. 99.

HENCE.

One definition of the word "hence," as given in "Webster's Dictionary," is, "from this cause or reason; as, an inference or deduction." Alexander v. The People, 96 Ill. 101

HENGHAM.

The reputed author of a Latin treatise in two parts, entitled Summa Magna and Summa Parva, (great and small sum, or summary,) which Mr. Reeves calls a collection of notes relating to proceedings in actions. It is said to have been translated into English in the time of Edward II or Edward III, and was published by Mr. Selden with some original notes of his own. Ralph de Hengham, the author, was Chief Justice of the King's Bench in the reign of Edward I, but was, for misconduct, degraded from his office, with many other justices of the period, and heavily fined. 2 Reeves' Hist. Eng. Law, 281. Crabb's Hist. 199. Bridgman's Leg. Bibliog. Spelman, voc. Justitia. Raulf de Ingham is referred to as an authority, in Yearb. M. 3 Edw. III

HEREAFTER.

The word "hereafter," when used in a statute, means at any time after the statute takes effect. Statutes Act, § 1, par. 17; People v. Cook County, 176 Ill. 584.

The word "hereafter" when used in a contract providing that all plans and patents, relating to a certain type of bridge construction and miscellaneous office work conceived of by either party "preceding this contract or hereafter, shall belong exclusively to the party of the first part," refers only to the time the contract is in existence. "The defendants rely upon the word 'hereafter' in it (the receipt) as indicating a grant in perpetuity to defendants to use complainant's name upon any and all soaps and blackings the defendants may thereafter manufacture. Now, I think the word 'hereafter' used as an adverb does not necessarily refer to unlimited time. It is not a synonym for 'forever.' It rather indicates the direction in time merely to which the context refers, and is limited by it. The duration of the word 'hereafter' is usually expressed by some other word, or is inferred from the context. In fact, the mind does not rest satisfied with the use of the word 'hereafter' in such

case, but naturally inquires, and expects to hear in addition, how long the hereafter is to last." Strauss v. Borg, 172 Ill. App. 466, 474.

The act of 1901, increasing the salaries of judges "hereafter to be elected" refers, by the expression quoted, to judges elected at regular elections, and does not include one elected to fill a vacancy caused by the resignation of a judge elected at a regular election held before the passage of the statute. Foreman v. People, 209 Ill. 569.

HERALDS' COLLEGE.

In 1450, the heralds in England were collected into a college by Richard II. The earl marshal of England was chief of the college, and under him were three kings-at-arms (styled Garter, Clarencieux, Norroy), six heralds-at-arms (styled of York, Lancaster, Chester, Windsor, Richmond, and Somerset), and four pursuivants-at-arms (styled Blue Mantle, Rouge Croix, Rouge Dragon, and Portcullis). This organization still continues. Enc. Brit.

HERBAGE.

The green pasture and fruit of the earth provided by nature for the food or bite of cattle. Simpson v. Coe, 4 N. Hamp. 303.

If a man grant "vesturam terræ," "the land itselfe shall not passe, because hee hath a particular right in the land: for thereby he shall not have the houses, timber-trees, mines, and other reall things parcell of the inheritance, but he shall have the vesture of the land, (that is) the corne, grasse, underwood, sweepage, and the like, and hee shall have an action of trespasse quare clausum fregit. The same law, if a man grant herbagium terræ, hee hath a like particular right in the land, and shall have an action quare clausum fregit; but by grant thereof and liverie made, the soile shall not passe, as is aforesaid." Co. Litt. 4 b.

HEREAFTER BORROW.

The power given, s. 3, 12 & 13 V. c. 87, to turnpike commissioners of setting

apart a sinking fund to pay off moneys they should "hereafter borrow," relates to further moneys borrowed for some fresh purpose, and not to moneys borrowed at a cheaper rate to supply the place of a prior loan. Chatham v. Rochester Commrs., 35 L. J. M. C. 81; L. R. 1 Q. B. 24.

HEREBANNUM.

Calling out the army by proclamation; a fine paid by freeman for not attending the army; a tax for the support of the army. Du Cange.

HEREDITAMENT.

A share of stock is not a hereditament, or an interest therein. Cummings v. People, 211 Ill. 403.

A very comprehensive word whereby everything passes which may be inherited, corporeal or incorporeal, real, personal and mixed. Canal Commissioners v. People, 5 Wend. (N. Y.) 453.

Hereditament includes whatever may be inherited, and extends to a movable, such as an heir-loom and even to the condition of a bond, which may descend to a man from his ancestor. Mitchell v. Warner, 5 Conn. 518.

The settled sense of that word is to denote such things as may be the subject matter of inheritance, but not the inheritance itself, and cannot therefore, by its own intrinsic force enlarge an estate, prima facie, a life estate into a fee. Moore v. Den, 2 B. & P. 251.

Under English Law.

"The word 'hereditament' is of as large extent as any word, for whatsoever may be inherited, be it corporeal or incorporeal, real, personal or mixt, is an hereditament" (Touch. 91;— a definition almost verbally copied from Co. Litt. 6 a. Co. Litt. 16 a, 383 a, b). "'Hereditament' is defined in the text-books of authority to signify all such things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance, and which, if they be not otherwise bequeathed, come to him who

is next of blood, and not to exors or admors as chattels do" (per Wilde, C. J., Lloyd v. Jones, 17 L. J. C. P. 206; 6 C. B. 81). "The most comprehensive words of description applicable to real estate are tenements and hereditaments; as they include every species of realty, as well corporeal as incorporeal." (1 Jarm. 777), e. g., an advowson. Westfaling v. Westfaling, 3 Atk. 460: Crompton v. Jarratt, 54 L. J. Ch. 1109; 30 Ch. D. 298.

This large meaning, however, may be cut down by a context. And in the present state of the authorities it is a question whether "hereditament," in the definition of "land" as prescribed by s. 3, Lands C. C. Acts, 1845, is or is not confined to a corporeal hereditament. That definition says that, for the purposes of that Act, "land" shall extend to "messuages, lands, tenements and hereditaments of any tenure." Leaning on the three latter words Cranworth, L. C., in Pinchin v. Lond. & Blackwall Ry. (24 L. J. Ch. 417; 5 D. G. M. & G. 851; 1 K. & J. 34) said,—"Looking at the whole context, the conclusion to which I have come is, that a 'hereditament' there means a corporeal hereditament: hereditament which may be the subject of tenure," which a right of way, or other easement not actually attached to land or buildings to be purchased,-e. g., a right of common in gross-cannot be. But in G. W. Ry. v. Swindon & Cheltenham Ry. (53 L. J. Ch. 1075; 9 App. Ca. 787), Lord Bramwell was of a directly opposite opinion; whilst, in the same case, Lord Fitzgerald, though not apparently with much energy, adhered to the doctrine of Pinchin v. Lond. & Blackwall Ry.; whereas Lord Watson took a middle course, and whilst agreeing generally with Lord Bramwell, observed (53 L. J. Ch. 1083) that the word is "in many of the leading clauses of the Act of 1845, limited, by reason of the context, to corporeal hereditaments." It should be added that the actual decision in the G. W. Ry v. Swindon & Cheltenham Ry. scarcely proceeded on the exact meaning of "hereditament." R. v. Cambrian Ry., L. R. 6 Q. B. 422.

HEREIN—HEREINAFTER

"Herein," as used in legal phraseology, is a locative adverb, and its meaning is to be determined by the context. It may refer to the section, the chapter, or the entire enactment in which it is used, and this rule is applicable to the construction of a document, as well as of a statute. In re Pearsons, 98 Cal. 608, quoting Anderson's Law Dict.

"A direction in a will that the legacy duty on the legacies 'herein' given shall be paid out of the estate, does not extend to legacies given by codicil, even though the codicil is directed to be taken as part of the will." Early v. Benbow, 2 Coll. 355: See as to "herein," Radburn v. Jervis, 3 Bea. 450; Fuller v. Hooper, 2 Ves. sen. 242: Jauncey v. A.-G., 3 Giff. 308; 10 W. R. 129; 5 L. T. 374.

"Where a testator, by his will, charges his lands with the payment of the legacies 'hereinafter' bequeathed, the charge does not extend to legacies bequeathed by a codicil." 1 Jarm. 95; Ib. 90, 186: Edmunds v. Low, 26 L. J. Ch. 432; 3 K. & J. 318; 5 W. R. 444.

HERESY.

In English law. An offense against religion, consisting not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. 4 Bl. Comm. 44, 45. An opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. 1 Hale, P. C. 384. This offense is now subject only to ecclesiastical correction, and is no longer punishable by the secular law. 4 Steph. Comm. 233.

HERETOFORE.

In General.

In times past; previous time; previously. Keeler v. Merchants, etc., Co., 253 Ill. 539; George v. People, 167 Ill. 456.

In times before the present; formerly. George v. People, 167 Ill. 456.

Statutes.

The word "heretofore," when used in a statute, means any time previous to the

day on which the statute takes effect. Statutes Act, § 1, par. 17; People v. Cook County, 176 Ill. 584.

Will.

Where a testator provides in his will that notes made payable to persons after his decease and signed by him should be treated as bequests in favor of the payee, a further statement in the same paragraph that testator has "heretofore" adopted this means of designating beneficiaries, etc., refers, by the word "heretofore," to notes for such purpose, and does not refer to a will or will theretofore made for such purpose. Keeler v. Merchants, etc., Co., 253 Ill. 539.

Heretofore Disposed of.

Heretofore, has relation to the several preceding paragraphs in the will—disposed of, means an effectual transfer, or disposition by the will, which could not be, until the death of the testator. R. Crane, etc., Heirs of J. Crane, 2 Root (Conn.) 488.

HERITAGE.

"The word 'heritages' is a term of Scottish property law, and I think it is used here [in a statute (Stamp Act, 1891, § 59, sub. § 1) exempting contracts for the sale of estates or interests in interalia, heritages from the duty chargeable on contracts for the sale of estates and interests in other property] to include all such rights arising out of land as are known to and recognized by Scottish law." Bruce, J., in Smelting Co. of Australia v. Inland Revenue Comrs. (1896), 2 Q. B. 186.

HIDAGE.

In old English law. A tax levied, in emergencies, on every hide of land; the exemption from such tax. Bracton, lib. 2, c. 56. It was payable sometimes in money, sometimes in ships or military equipments; e. g., in the year 994, when the Danes landed in England, every three hundred hides furnished a ship to king Ethelred, and every eight hides one pack and one saddle. Jacob.

HIDE.

(From Saxon hyden, to cover; so, Lat. tectum, from tegere.) In old English law. A building with a roof; a house. As much land as might be ploughed with one plough. The amount was probably determined by usage of the locality. Some make it sixty, others eighty, others ninety-six, others one hundred or one hundred and twenty, acres. Co. Litt. 5; 1 Plowd. 167; Shep. Touch. 93; Du Cange.

As much land as was necessary to support a hide, or mansion house. Co. Litt. 69a; Spelman; Du Cange, "Hida;" 1 Introd. to Domesday Book, 145. At present, the quantity is one hundred acres. Anc. Inst. Eng.

HIGH CONSTABLE.

The statute of Winchester, 13 Edw. I (now repealed by 7 & 8 Geo. IV. c. 27,) after requiring every man "to have in his house harness for to keep the peace," and specifying the kind of armor, proceeds to ordain (c. 6,) that "in every hundred and franchise two constables shall be elected, to make the view of armour." This statute is considered by Blackstone and Spelman, as having first created the office of constables of hundreds, or high constables, as they are now generally termed. 1 Bl. Com. 355, 356. Spelman, voc. Constabularius. See 4 Inst. 267.

Petty constables are considered by the same authors as having been first instituted about the reign of Edward III. These opinions, however, have been disputed, and the constable of the hundred has been held to have been an officer at the common law, before the statute of Winchester. Powell, J. 1 Ld. Raym. 1192, 1193. Holt, C. J., Ld. Raym. 1195. 1 Salk. 175. The same has been held as to the petty constable. 4 Inst. 267. See Bacon's Works, iv. 309. Constables, indeed, are expressly mentioned in Magna Charta, and by Bracton, in connection with the sheriff, coroner and other royal Magna Charta, 9 Hen. III, c. bailiffs. 17. Id. Johan. c. 24. Bract. fol. 337. But these are supposed to have been constables of castles. 2 Inst. 31. So, the constable is mentioned in the statute of Westminster 1, c. 15; though Britton, whose work was written about the same time, in enumerating the county officers under the sheriff, viz., hundredors, serjeants and bedels, says nothing of the constable. Britt. fol. 2. It is the opinion of a late writer on this subject, that there was a series of officers, appointed under the title of constable, soon after the Norman Conquest, with a regular gradation of rank, from the lord high constable to the constable of the smallest franchise, uniting military with civil powers; and that they were, in each case, commanders of the levies of their particular districts, in case of domestic tumults, or the incursions of robbers. Willcock's Office of Constable, Introd. the whole, there seems little doubt that the office of constable, though partaking of many of the characteristics of the ancient Saxon peace officers (the tithing man being little distinguishable from the petty constable), is essentially of Norman The military or half military character which has always belonged to it in England (a decidedly Norman feature, as well as the name itself), makes strongly in aid of this opinion. Under the statute of Winchester, it seems to have differed little from that of a modern militia inspector, and it is worthy of remark that the enrollment of the militia. providing them with quarters when called out, etc., form to this day in England part of the duties of a constable. Stat. 52 Geo. III, c. 38. See 12 Mod. 254. 5 Mod. 427. Willcock's Off. Constable, 76, 78, 80. Dr. Wooddesson concurs in the opinion of Blackstone, that the officers now called constables derived that appellation at or after the statute of Winchester; although it is his conclusion that the office itself, in substance and effect, subsisted from immemorial antiquity in the English laws. 1 Wooddes. Lect. 152, 153. The opinion of Sir William Blackstone, that the modern office unites in itself those of the Saxon tithingman, and Norman constable (properly so called), is the one which perhaps best reconciles the different views which have been taken on this point of origin. 1 Bl. Com. 356.

HIGH COURT OF PARLIAMENT.

In English law. The English pariiament, as composed of the house of peers and house of commons. The house of lords sitting in its judicial capacity. This term is applied to parliament by most of the law writers. Thus, parliament is said by Blackstone to be the supreme court of the kingdom, not only for the making, but also for the execution, of the laws. 4 Bl. Comm. 259. Lord Coke and Lord Hale also apply the term "court" to the whole parliament. see Finch, Law, 233; Fleta, lib. 2, c. 2. But, from the fact that in judicial proceedings, generally, the house of commons takes no part, but only in the trial of impeachments, and then only as prosecutor, and from the fact that the house of commons disclaimed possession of judicial powers at the deposition of Richard II, and the twelve judges made a similar decision in 1 Hen. VII, the propriety of this use of the term has been questioned. Bl. Comm. (Warren, Abr.) The propriety of its application would seem to be derived from the claim of parliament to be considered as the successor of the aula regis, which was a judicial as well as a legislative body, and, if the succession is established, would be applicable, although the judicial power may have been granted to the various courts.

HIGH CRIMES AND MISDEMEA-NORS,

A term used in Const. U. S. art. 2, § 4, and elsewhere, as a ground of impeachment. Its technical sense is parliamentary, and it includes many acts not constituting crimes. Cooley, Const. Lim. 159.

Such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet owing to some technical circumstance, do not fall within the definition of felony. State v. Knapp, 6 Conn. 417.

HIGH SCHOOL.

A high school is a department of the common or free schools of the State, and it, as well as the grade schools, must be open to all children of the district school age, free, and if the right of attendance is extended to children of other districts it must be upon the same terms to all similarly situated. People v. Moore, 240 Ill. 410.

HIGH WATER MARK.

The courts have attempted to define high-water mark as the point below which the presence and action of the waters is so common, usual and long continued in ordinary years as to mark upon the soil a character distinct from that of the banks with respect to vegetation as well as soil, stating that ordinary low water or low water was the point at which the water receded at its lowest stage. These are more satisfactory definitions than those which leave a strip of land between the riparian owners and the water. City of Peoria v. Central Nat. Bank, 224 Ill. 55.

A grant giving the ocean or a bay as the boundary, by the common law, carries it down to ordinary high water mark. The doctrine, it is believed, is well settled, that the point at which the tide usually flows is the boundary of a grant to its shore. As the tide ebbs and flows at short and regular recurring periods, to the same points, a portion of the shore is regularly and alternately sea and dry land. This being unfit for cultivation or other private use, is held not to be the subject of private ownership, but belongs to the public. When the adjacent owner's land is bounded by the sea or one of its bays, the line to which the water may be driven by storms, or unusually high tides, is not adopted as the boundary. On the contrary, the ordinary high water mark indicated by the usual rise of the tide, is his boundary. Seaman v. Smith, 24 Ill. 524.

"The term 'high-water mark' although sometimes used, is inappropriate when applied to a fresh water stream where the tide does not flow and ebb. But we think it must be construed as meaning, the line on the river bank reached by the water when the river is ordinarily full and the water ordinarily high. Not

the highest point touched by the water in a freshet, nor when the water is the lowest in season of drought, but the highest limit reached when the river is unaffected by freshets and contains its natural and usual flow; the highest limit at the ordinary state of the river. This does not mean * * the top of the bank, many feet distant from the bed of the river in its ordinary state and only reached by the water on rare occasions of extreme freshet." Morrison v. Skowhegan First Nat. Bank, 88 Me. 159.

HIGHEST AND BEST USE.

The "highest and best use" of the property condemned means from a financial standpoint and not from a moral one, and if the evidence shows that such best use is for a saloon and dance-hall, the petitioner is not entitled to show, in rebuttal, that the saloon and dance-hall is conducted in an unlawful manner. Freiberg v. South Side El. R. R. Co., 221 Ill. 513.

HIGHWAY.

See also Highway by Prescription, Public 'Highway.

In General.

"The term 'highway' is generic, inclusive of all public ways, and means a public road which every person, whether an inhabitant or a stranger, has a right to use for passage and traffic. The term will, therefore, include streets in cities, footways or sidewalks, turnpikes, plank-roads and bridges."

"The word 'highway,' 'road' or 'street' may include any road laid out by the authority of the United States, or of this State, or of any town or county of this State, and all bridges upon the same."

"A common street and public highway are the same, and any way, which is common to all the people, may be called a highway." M. & O. R. R. Co. v. Davis, 130 III. 150, 151; State v. Mathis, 21 Ind. 278; City of Detroit v. Blackly, 21 Mich. 84; Jones v. Inhabitants of Andover, 6 Pick 58; Davis v. Smith, 130 Mass. 113; Railroad Co. v. Dunn, 78 III. 197; M. & O. R. R. Co. v. Davis, 130 III. 148.

"A highway is a public way open and free to any one who has occasion to pass along it on foot or with any kind of vehicle." Laufer v. Bridgeport Traction Co., 68 Conn. 488.

"The term highway in common language expresses the same thought as the word road, and while lawyers and judicial writers frequently use the word in a much larger sense * * * [yet it] is used in the constitution in association with the word roads and alleys, a clear indication that such a thing as a public waterway was not in the minds of the lawmakers." In re Burns, 155 N. Y. 29.

A cul de sac may be a highway. Boleman v. Bluck, 18 Q. B. 870. R. C. 12,557.

"But it is argued that a cul-de-sac may be a highway. That is so in a street in a town into which houses open and which is repaired, sewered, and lighted by the public authority at the expense of the public." Kay, J., alone in Bourke v. Davis, 44 Ch. D. 122, citing Young v. Cuthbertson, 1 Macq. 456; Rugby Charity v. Merryweather, 11 East, 375, n.

"But I am not aware that this law has ever been applied to a long tract of land in the country on which public money has never been expended." Kay, J., alone in Bourke v. Davis, 44 Ch. D. 123.

Statutory Definition.

Paragraph 16 of section 1 of chapter 131 of the Revised Statutes, relating to the construction of statutes, provides that the words highway, road or street, may include any road laid out by authority of the United States, or this State, or of any town or county of this State, and all bridges upon the same. Com'rs of Union Drainage Dist. v. Com'rs of Highways, 87 Ill. App. 99.

A passage open to all the citizens of the State, to go and return, pass and revass, at their pleasure. Morse v. Sweenie, 15 Ill. App. 492.

Alleys.

The term "highway" is a generic name of all kinds of public ways and may include alleys. Mobile and Ohio Railroad Co. v. Davis, 130 Ill. 146; Elliott on

Roads and Streets, sec. 1; Heppes Co. v. City of Chicago, 260 Ill. 512.

Bridge.

A bridge is a highway over water. Chicago v. McGinn, 51 Ill. 272.

Ferry.

A ferry is a highway over a watercourse. Chicago v. McGinn, 51 Ill. 273.

Railroad.

A railroad is, for some purposes and in a certain sense, a highway; not, however, in the sense that a street or road is a public highway. It is quasi public in character. A street or road is a public highway in a much broader sense. It is laid out and opened by the public authorities for the general use of the public, built and kept in repair at public expense, and all persons have the right of free access thereto with the right to travel thereon. Kotz v. I. C. R. R. Co., 188 Ill. 582.

Sidewalk.

A sidewalk is part of the highway. Chicago v. Pittsburg, C. C. & St. L. R. Co., 146 Ill. App. 422.

Street.

A street is a highway. Chicago v. Pittsburg, C. C. & St. L. R. Co., 146 Ill. App. 422; O. I. & W. Ry. Co. v. People, 39 Ill. App. 474.

The fundamental idea of a street is not only that it is public, but public for all the purposes of free and unobstructed passage, which is its chief and primary, but by no means sole use. 2 Dillon on Mun. Corp., 3d Ed., par. 683; City of Quincy v. Jones, 76 Ill. 244; Morse v. Sweenie, 15 Ill. App. 492.

"A common street and public highway are the same, and any way which is common to all the people, may be called a highway." State v. Wilkinson, 2 Vt. 487; M. & O. R. R. Co. v. Davis, 31 Ill. App. 491.

Water of Stream Crossed.

The water of a stream crossed by a highway is no part of the highway. Old Town v. Dooley, 81 Ill. 259.

HIGHWAY BY PRESCRIPTION.

In order to establish a road as a public highway by prescription it must appear that the public has had the adverse use or possession under claim of right, continuous and uninterrupted, for the statutory period, with the knowledge and acquiescence of the owner of the land over which the easement is claimed. Township of Madison v. Gallagher, 159 Ill. 105; Town of Wheatfield v. Grundmann, 164 Ill. 252; Town of Bethel v. Pruett, 215 Ill. 171, 172; Doss v. Bunyan, 262 Ill. 101; Town of Anchor v. Stewart, 270 Ill. 60.

In order to establish a prescriptive right in the public to pass over private property where it is claimed that such property constitutes a part of a public highway, and where no act has been done by the owner to indicate that such property is a part of the highway or by the public authorities to indicate that it has been considered by them as a part of the highway, it must be shown that a certain and well defined line of travel has existed over that property for a period of at least the statutory period. Proof of occasional travel over the property, outside the acknowledged highway and outside the main line of travel, for the purpose of avoiding ruts or bad spots in that highway is not, alone, sufficient. Township of Madison v. Gallagher, 159 Ill. 105; Town of Bethel v. Pruett, 215 Ill. 162; Village " St. Anne v. Coyer, 223 Ill. 96; City of Chicago v. Galt, 224 Ill. 425.

In order to establish a highway by prescription, the public use must be adverse, uninterrupted, exclusive, continuous, and under claim of right. Illinois Central Railroad Co. v. City of Bloomington, 167 Ill. 9; City of Chicago v. Chicago, Rock Island and Pacific Railway Co., 152 Ill. 561; Town of Brushy Mound v. Mc-Clintock, 150 Ill. 129; Town of Madison v. Gallagher, 159 Ill. 105. Where the use is merely permissive, it cannot be Where the use is by mere adverse. permission of the owner, and not adverse, there is no basis on which a right of way by prescription can rest. The reason, why it has been held by the courts, that the use of vacant, unenclosed, and unoccupied land for twenty years by the public in passing and re-passing, will give them no prescriptive right, is, that such use is presumed to be merely permissive and not adverse. Elliott on Roads and Streets, p. 137. In Town of Brushy Mound v. McClintock, 150 Ill. 129, it was said (p. 133): "In order to establish a public highway by prescription over unenclosed lands, there must be something more than mere travel over it by the public. It must appear that the user is under a claim of right in the public, and not by mere acquiescence on the part of the owner. Express notice is not necessary, but there must be such conduct on the part of the public authorities as to reasonably inform the owner that the highway is used under a claim of right." In this case, it was also held, that, where a public highway was located on a tortuous line, and where little work was done on it during the years when it was traveled over, and where the work done did not amount to an improvement of a public highway, but was rather for the temporary purpose of travel, the owner of the land could not be charged with notice that such use was under a claim of public right. O'Connell v. Chicago Terminal R. R. Co., 184 Ill. 316, 317. See, also, Martin v. People, 23 Ill. 342; Geutleman v. Soule, 32 Ill. 271; Manrose v. Parker. 90 Ill. 581; Dexter v. Tree, 117 Ill. 532; Irwin v. Dixon, 9 How. 10; Root v. Commonwealth, 98 Pa. St. 170; Onstatt v. Murray, 22 Iowa 468; Durgin v. Lowell, 3 Allen 398; City of Chicago v. C., R. I. & P. Ry. Co., 152 Ill. 572, 573.

In Warren v. Town of Jacksonville, 15 Ill. 236, the court said (p. 241): "While so much land lying in common in this country remains free to public uses and travel until circumstances induce owners to enclose, we can deduce no strength of inference or conclusion from mere travel across it by the public without objection from the owner. It is neither the temper, disposition, fashion or habit of the people, or custom of the country to object to community enjoying such privilege until owners wish to enclose." In Kyle v. Town of Logan, 87 Ill. 64, it was held that the public does not acquire a public

road over vacant and unoccupied land by travel over the same for twenty years or more, merely from acquiescence on the part of the owner, in the absence of his doing some act or suffering some act to be done from which it can be fairly inferred he intended a dedication to the public. In City of Chicago v. Stinson, 124 Ill. 510, it is held that where land has been unenclosed for more than twenty years, as well as that lying around it, the mere fact that parties may have traveled over it in passing back and forth between a street and an avenue does not, of itself, indicate an intention to dedicate the land so used as a public highway. It was held in Geutleman v. Soule, 32 Ill. 271, that while it is true that travel may slightly deviate from the thread of the road to avoid an obstruction and still not change the road itself, yet that a prescriptive right can not be acquired to pass over a tract of land generally, but it must be confined to a specific line or way,-to a definite, certain and precise line. See, also, Owens v. Crossett, 105 Ill. 354; City of Ottawa v. Yentzer, 160 Ill. 516, 517.

HIGHWAY ROBBERY.

Robbery committed on a public highway was, under St. 23 Hen. VIII, c. 1, more severely punished than robbery committed elsewhere. This distinction was abolished by St. 3 & 4 Wm. & Mary, c. 9.

HILARY TERM.

In English law. A term of court, beginning on the 11th and ending on the 31st day of January in each year.

HILL.

The word "hill" is the simplest form of expression in the language to designate an elevation, ascent, or incline. Judejko v. Chi. C'y R'y Co., 166 Ill. App. 143.

HIMSELF OR HIS.

See also His.

A certificate of publication of notices required by law or otherwise to be published in a newspaper, which certificate is made by a corporation or a woman is a sufficient compliance with section 1 of the Notices Act, providing that proof of such publication may in certain cases be made by the certificate of the publisher of the newspaper in which such publication was made, "by himself or his agent," section 1 of the Statutes Act providing that in statutes words importing the masculine gender may be applied to females, and words importing persons may be applied to corporations. Maass v. Hess, 41 Ill. App. 283.

When a person "himself" has to do a thing he cannot do it by an agent (Monks v. Jackson, 46 L. J. C. P. 162; 1 C. P. D. 683). So where (by s. 38 [1], 46 & 47 V. c. 51) power is given to a person, reported guilty of electoral malpractices, of being heard, "by himself," before the Court inquiring into the municipal election at which such malpractices are alleged to have taken place, he cannot appear by counsel or solicitor. Hereford Case, R. v. Jones, 23 Q. B. D. 29; 37 W. R. 508; 5 Times Rep. 411.

HINDER.

See Disturb.

HINDER, DELAY AND DEFRAUD.

A conveyance made to hinder and delay creditors is a conveyance "to hinder, delay and defraud" such creditors within the meaning of the Attachment Act. Adams v. Pease, 113 Ill. App. 360.

HINDU LAW.

The system of native law prevailing among the Gentoos, and administered by the government of British India.

In all the arrangements for the administration of justice in India, made by the British government and the East India Company, the principle of reserving to the native inhabitants the continuance of their own laws and usages within certain limits has been uniformly recognized. The laws of the Hindus and Mohammedans have thus been brought into no-

tice in England, and are occasionally referred to by writers on English and American law. The native works upon these subjects are very numerous. The chief English republications of the Hindu law are, Colebrooke's Digest of Hindu Law, London, 1801; Sir Wm. Jones' Institutes of Hindu Law, London, 1797. For a fuller account of the Hindu law, and of the original Digests and Commentaries, see Morley's Law of India, London, 1858, and Macnaghten's Principles of Hindu and Mohammedan Law, London, 1860. The principal English republications of the Mohammedan law are Hamilton's Hedaya, London, 1791; Baillie's Digest, Calcutta, 1805; Precis de Jurisprudence Mussulmane Selon le Rite Malikite, Paris, 1848; and the treatises on succession and inheritance translated by Sir William Jones. An approved outline of both systems is Macnaghten's Principles of Hindu and Mohammedan Law; also contained in the "Principles and Precedents" of the same law previously published by the same author.

HIS.

See also Himself or His.

The word "his" in an instruction upon the credibility of witnesses may be used in its generic sense, meaning each witness in the case, without regard to his or her sex. Village of Wilmette v. Brachle, 110 Ill. App. 364.

HIS AND HE.

See also He or His.

The pronoun "his" and "he" are commonly used to refer to any member of a class composed of males and females. The People v. Goodrich, 251 Ill. 567.

HITHERTO INCREASED THEIR ANNUITIES.

The term "hitherto," qualifies and limits what otherwise might appear either general or uncertain, and restrains the increase to that period of time then elapsed, and prevents its reaching the future. Mason v. Jones, 13 Barb. (N. Y.) 479.

HOGHENHYNE.

(From Saxon hogh, house, and hine, servant.) A domestic servant. Among the Saxons, a stranger guest was, the first night of his stay, called uncuth, or unknown; the second, gust, guest; the third, hoghenhyne; and the entertainer was responsible for his acts as for those of his own servant. Bracton, 124b; Du Cange, "Agenhine;" Spelman, "Homehine."

HOGSHEAD.

A liquid measure, containing half a pipe; the fourth part of a tun, or sixty-three gallons.

HOLD.

The word "hold," which was a technical word as employed formerly in the tenendum clause of a deed, has now no technical meaning when used in such instruments. Bouvier's Law Dic. "Tenendum;" Wheeler v. County of Wayne, 132 Ill. 599. Among others, the following definitions of the word "hold" are given by Mr. Webster: "To derive title to; to retain in one's keeping; to be in possession of; to occupy; to maintain authority over." Ure v. Ure, 185 Ill. 217, 218.

HOLD AND CONTROL.

A will devising property to a trustee to "hold and control" for the benefit of the cestui que trust during his life imports an intention, by the quoted expression, that the trustee should enter into and retain possession of the trust estate during the lifetime of the cestui que trust, and should diligently devote his energy, judgment and discretion to the management and control of the property to the end that the greatest possible income should be secured therefrom. Ure v. Ure, 185 Ill. 218.

HOLD-OVER.

A hold-over under the Civil Service Act is a person who held his office by virtue of an appointment made prior to the date when the Civil Service Act went into operation. Ptacek v. The People, 194 Ill. 128.

HOLDING A POSITION.

"In a civilized community 'holding a position' means lawfully holding it, and it would be unreasonable to declare that the legislature meant * * to include those who held office by force, fraud, mistake, or without any right thereto. A statute should receive a sensible construction, in conformity to reason and justice, unless the language used is so clear and explicit as to prevent it." People v. Troy, 153 N. Y. 518.

HOLDING OUT.

The doctrine of "holding out" is a branch of that of estoppel. If a man holds himself out as a partner in a firm, and thereby induces another person to act upon that representation, he is estopped as regards that person from saying that he is not a partner. A permission by a retiring partner after a dissolution of partnership to the remaining partner to carry on the business under the old firm name is not, where there has been proper notice of the dissolution, a "holding out" on the part of the retiring partner such as will render him liable for a debt of the firm contracted after the dissolution with a person who, not having dealt with the old firm, had no notice of the dissolution. In re Fraser (1892), 2 Q. B. 633, citing Newsome v. Coles, 2 Camp. 617.

HOLIDAY.

A day of cessation from labor; a day when public business is suspended; a non-judicial day. Primarily the term meant a "holy day," or religious festival. In modern usage it indicates a secular day on which, by statute, public business is suspended. It does not appropriately include Sunday. 51 N. J. Law, 255.

HOLIDAYS EXCEPTED.

By a charter-party, a vessel was "to be loaded in L. in 14 days, and to be discharged, weather permitting, at not less than 25 tons per working day (holidays excepted);"—held, that though "holidays" are not included in "working day," yet that the exception related only to the discharge as its last antecedent, and that the loading was to be done in 14 days including Sundays. Niemann v. Moss, 29 L. J. Q. B. 206.

HOLOGRAPHIC WILL

A will written, dated and signed entirely by the testator's own hand, and unattested by any witness. 26 Am. & Eng. Ency. of Law, 127; Harrison v. Weatherby, 180 Ill. 436.

HOLY ALLIANCE.

A league entered into by Alexander I, the Czar of Russia, Francis I, emperor of Austria, and William III, King of Prussia; the professed objects of which were the union of Christian nations in a Christian brotherhood, and the application of Christian principles to the dealings of sovereign with sovereign and the relations of sovereign to subject.

The alliance of which the czar, it is curious to observe, was the author, was entered into at Paris, 26 Sept. 1815, twenty days before Napoleon landed at St. Helena. All creeds were to be united, Greek, Roman Catholic and Protestant, and all other powers were invited to join, except the Sultan, who was excluded because he was not Christian enough, and the pope, who was so conspicuously Christian that if admitted he would have to take the first place. Those excluded in it were subsequently joined by all the sovereigns of Europe, except the King of England.

The professed objects of the alliance were, as above stated. The profession was extraordinarily emphatic. And these were no doubt to some extent the real objects, for motives are seldom wholly covert, even in the mind of a king.

But other objects there undoubtedly were in the background of consciousness which moved the contracting parties far more powerfully. These were, it cannot be doubted, the strengthening of defenses against the dreaded shape then just banished from the world they hoped to dominate, against him and his, a special clause barring the way to any European throne against any of the Bonaparte family in the erecting of barriers against the notions in regard to the rights of man and the sphere of government which since the first French revolution had been gradually making their way throughout Europe; the strengthening thus (other objects but sides and angles of this vast solid) of their several dynasties against whatever might come against them. For this what more potent than the old blind faith, the invocation of divine powers, the assertion of the divine right, and the absolutism which was the logical result.

The change that was then coming over the world had however gone too far. The reliance really fell before the new forces which it was created to control, enforced no doubt by the obvious fact that the conduct of princes was no more Christian than it was before, though to the casual eye the causes of its dissolution were the French revolution of 1830, the European upheaval of 1848, and the reestablishment of the Napoleonic dynasty in 1850.

HOME.

When a person takes up his abode in a given place, without any present intention to remove therefrom, such place of abode becomes his residence or home, and will continue to be his residence or home, notwithstanding temporary personal absences, until he shall depart with intention to abandon such home. Warren v. Thomaston, 43 Me. 418.

"The word 'home,' when made the subject of a devise, is ambiguous, and may mean merely the use of sufficient room, or it may include a support. We have therefore to put ourselves as far as possible in the testator's place, to ascertain the meaning which it bore in his mind." Denfield, Petitioner, 156 Mass. 265.

HOMESTEAD.

See also Householder, Householder Having a Family.

A homestead, under section of the Exemption Act, is an estate in land, vested in the person designated by law. Dinquel v. Dacco, 273 Ill. 122.

"The estate of homestead in a widow in the lands, of which her husband died seized, is a conditional life estate, subject to the joint right of occupancy of the children of the deceased husband during the minority of the youngest thereof. estate is upon condition, that it shall not be voluntarily surrendered or abandoned." Jones v. Gilbert, 135 Ill. 27. It cannot be claimed, that the widow surrendered or abandoned the homestead because she went to her daughter's house to be taken care of during her last sickness, and rented the homestead place during her absence, in order to get income enough from it to pay the expenses of her sickness. Walters v. People, 18 Ill. 194; Browning v. Harris, 99 Ill. 456; Hagerty v. Hagerty, 149 Ill. 655.

Where the head of the family, having an estate in fee in the homestead premises, dies, the right of the homestead devolves upon the surviving wife by operation of law. A life estate is carved out of the fee for her estate of homestead. The heirs take a reversionary interest or remainder, expectant upon the termination of the estate for life and for years created by the statute. Browning v. Harris, supra; Jones v. Gilbert, supra; Kitterlin v. Milwaukee Mechanic's Ins. Co., 134 Ill. 647; Merritt v. Merritt, 97 Ill. 243; Brokaw v. Ogle, 170 Ill. 124, 125.

"The word 'homestead' has both a popular and a legal signification. In its popular sense it signifies the place of the home—the residence of the family; it represents the dwelling-house at which the family resides, with the usual and customary appurtenances, including the outbuildings of every kind necessary or convenient for family use, and lands used for the purposes thereof." Keyes v. Cyrus, 100 Cal. 324, quoting Gregg v. Bostwick, 33 Cal. 227; 91 Am. Dec. 637.

Elements.

In order to establish an estate of homestead under the statute of this State, three things must occur: First, the person claiming the estate must be a householder; second, he or she must have a family; and third, the premises claimed must be occupied as a residence. Where either of the three requirements do not exist the person claiming a homestead must fail. Holnback v. Wilson, 159 Ill. 152; Rock v. Haas, 110 Ill. 533.

Appurtenances.

The term "homestead," as used in this will, means "the dwelling house at which the family resides, with the usual and customary appurtenances, including outbuildings of every kind necessary and convenient for family use, and lands used for the purposes thereof." Anderson's Law Dic. 512; Smith v. Dennis, 163 Ill. 635.

Grant of.

A deed granting land to be a "homestead" for the grantee means, by the word "homestead," a residence to be occupied by the grantees as a home. Radebaugh v. Radebaugh, 266 Ill. 200.

Devise.

Where the devise of "the homestead" is followed by a description which is incomplete but not incorrect, parol testimony is competent to prove the legal description of the homestead premises. Morall v. Morall, 236 Ill. 640.

Married Woman.

Where a married woman is a house-holder and the head of a family, it would require a forced and unnatural construction of the statute to hold that she is not entitled to its protection, since in such case she falls directly within its terms. Kenley v. Hudelson, 99 Ill. 500.

Nature of Estate.

The estate of homestead is in this State, during the period of its existence, a joint tenancy, the principle of survivorship being inseparably connected with it. When the estate is cast upon the family of a deceased householder it is enjoyed

as a whole by all the members jointly entitled to it, and upon the death of one the interest of the survivors is enlarged to that extent. In the case of minor children, as they become of age their interests cease and the remaining members of the family succeed to the whole homestead estate. Walker v. Walker, 195 Ill. 412.

Residence.

The land must be the spot on which residence is claimed, and on which the claimant's family resides—it must be the "home" of the family. A mere occupancy and claim of homestead, the premises not being the actual residence or home of the family for every day in the year, may well consist with the view we have endeavored to express. It might still be the homestead though the head of the family might leave it in search of another home in a distant State, and being disappointed, might return to it. "We can lay down no rule to govern such cases, each case must depend on its own peculiar circumstances, so that among them no evidence shall be found of au abandonment by himself and family. Whether it is a wise policy to grant such privileges, is not a question for the court; it is sufficient for us to arrive at the true meaning and intention of the legislature in their grant of it, and that we think is abundantly manifest-to secure to the family a home." Kitchell v. Burgwin, 21 III. 44-45.

Homestead Estate in Fee Simple.

The phrase "homestead estate in fee simple" (to the extent of \$1,000) in a partition decree referred to the interest of the surviving wife under the deed and not to any interest purely as a surviving wife where the husband, during a former marriage, conveyed all his land, including the homestead, to a third person without the then wife joining in the conveyance, and such third person reconveyed the property to the wife, and, after the death of the first wife, when the husband, owing to the ineffectiveness of the conveyance to pass the homestead to the wife, owned such homestead and an un-

divided interest in the remainder, as well as a reserved life estate, conveyed to a third person, his wife joining in the deed, all his interest in the entire tract of land, including the "estate in fee simple to the value of \$1,000," and such third person reconveyed the property to the second wife, and, upon partition of the estate after the husband's death, a decree awarding the second wife a "homestead estate in fee simple to the extent of \$1,000" was rendered. White v. Van Patten, 280 Ill. 215.

HOMESTEAD LOAN ASSOCIATION.

The relation sustained by the members of such association to each other is essentially that of copartners, and the corporation is a sort of expedient resorted to for the more convenient prosecution and control of the peculiar copartnership business for which the association was organized. Such corporations do not deal at arm's length with their members, as an ordinary corporation does with strangers. The transaction between a member and the association called borrowing, is simply allowing the member to receive money on his shares of stock in advance of their maturity, in pursuance of the plan and purpose of the association. Broch v. French, 116 Ill. App. 17, 18.

HOMESTEAD RIGHT.

The right to live upon, occupy and enjoy the premises as a home. Brooks v. Hotchkiss, 4 Ill. App. 177.

HONEST BREACH OF TRUST.

A trustee who under the influence of charity or sympathy pays to widows or infants in distress money which he knows ought not to go to them, but which according to the mandate of the trust instrument he should hoard up and keep commits what may be called an "honest breach of trust." He is not a fraudulent trustee. In re Smith (1893), 2 Ch. 1.

HONORABLY BOUND.

A written proposition from a creditor to a debtor, requesting the execution and delivery to him of a deed, of the mortgaged property and title papers, and surrender of possession, and also stating, "I shall consider myself honorably bound, if anything can be made out of the property during the next three years, more than the interest, taxes, insurance and repairs, to give * * the benefit of it," when such proposition is accepted by the debtor, constitutes a valid and binding declaration of trust, and such trust may be declared and enforced in equity. Lake v. Freer, 11 Ill. App. 580.

HORN.

In old Scotch practice. A kind of trumpet used in denouncing contumacious persons, rebels and outlaws, which was done with three blasts of the horn by the king's sergeant. This was called "putting to the horn," and the party so denounced was said to be "at the horn." Bell, Dict.; Skene de Verb. Sign.; 1 Pitc. Crim. Tr. pt. 2, pp. 77, 80.

HORSE.

See also Ass.

Until a horse has attained the age of four years, he is called a "colt." 1 Russ. & R. 416. This word is sometimes used as a generic name for all animals of the horse kind. 3 Brev. (N. C.) 9.

"A 'horse' is exempt [from seizure upon execution]; but at what particular age an animal ceases to be a colt and becomes a horse, is not specified in the statute.

* * One fair test, it would seem, is, that he is old enough to be worked, and bought or raised by the owner therefor." Mallory v. Berry, 16 Kan. 295.

Genus.

A quadruped of the genus equus. Ohio, etc., R. Co. v. Brubaker, 47 Ill. 463.

Gelding.

A gelding is a horse within the meaning of an indictment charging a defendant with stealing "one horse," the term being used in the indictment as descriptive of the genus of the animal, and not

of its sex or character as changed by artificial means. Baldwin v. People, 2 Ill. 304.

Mule.

A mule comes nearer a horse than an ass. Toledo, etc. v. Cole, 50 Ill. 186.

HORSEBACK.

A horseback, in mining parlance, means that the coal deposit has been forced up into a ridge or hill by the uneven surface of the underlying strata of rock, the effect of which is to compress the coal, the vein being thinner at the horseback than elsewhere, and it not infrequently happening that the vein is entirely pinched out by the horseback. Jones, etc., Co. v. George, 227 Ill. 66.

HORSES AND CATTLE.

The words "horses and cattle" as used in the act of 1855 with reference to the duty of a railroad company to fence its right of way includes a mule. Toledo, etc., R. Co. v. Cole, 50 Ill. 186.

HOSPITAL.

The word "hospital" ordinarily implies a public institution. French v. Calkins, 252 Ill. 257.

HOSTILE.

"The word 'hostile' when applied to the possession of an occupant of real estate holding adversely, is not to be construed as showing ill-will, or that he is an enemy of the person holding the legal title, but means an occupant who holds, and is in possession, as owner, and therefore against all other claimants of the land." Hoffine v. Ewings, 60 Neb. 734.

HOSTILE IN ITS BEGINNING.

An instruction in relation to adverse possession that such possession must be "hostile in its beginning" means hostile as a matter of law. Purtle v. Bell, 225 Ill. 528.

HOSTLER.

In railroad parlance one who receives engines from the regular engineers, as they come from the road, and then takes charge of them in the shops or round-house, and has them cleaned and ready for departure on the road again when they were wanted. C. & St. L. R. R. Co. v. Ashing, 34 Ill. App. 105.

An employe whose duty was to care for locomotives at the roundhouse, and run them in and out of it. Chicago, etc., R. Co. v. Massig, 50 Ill. App. 667.

HOTEL.

An edifice designed for the habitation of men. Bruen v. People, 206 Ill. 423.

A "hotel," within the meaning of the act of 1913 relating to hotels and lodging houses, includes every building or structure kept, used and maintained as, or advertised as, or held out to the public to be an inn, hotel, or public lodging house or place where sleeping accommodations are furnished for hire to transient guests, whether with or without meals in which ten or more rooms are used for the accommodation of guests. Act of 1913, § 1 (Callaghan's Sup. ¶ 6197 [10]).

Under English Law.

"Hotel" is not to be confounded with the old word "hostel" which is a synonym for inn. An "hotel" is a place where lodgings are let and where provisions are to some extent, supplied (Smith v. Scott, 1 L. J. C. P. 143; 9 Bing. 14: Gibson v. King, 12 L. J. Ex. 9; 10 M. & W. 667); that the lodgings are let to invalids, makes no difference (Re Jones, Ex p. Thorne, 45 L. J. Bank. 158; 3 Ch. D. 357). In Smith v. Scott, Tindal, C. J., said, "It is clear that the word 'hotel' is not used in the sense of the old word 'hostel,' for that means what is now termed an 'inn;' and as the word 'inn' immediately precedes, it could scarcely have been intended to designate the same thing by both. The modern word is introduced from the French, and rather implies a house to which people resort for lodgings, than for the sort of entertainment procured only at an inn." In

that case a lodging-house keeper who procured and supplied, at a small profit, provisions for her lodgers,—such provisions being kept separately for the individuals for whom they were respectively procured,—was the keeper of an "hotel:" and in Gibson v. King (sup.) it was held that a boarding-house was, a fortiori, an "hotel" within the definition.

"The word is of French origin, being derived from hostel, and more remotely from the Latin word hospes, a word having a double signification, as it was used by the Romans both to denote a stranger who lodges at the house of another, as well as the master of a house who entertains travelers or guests. * * A hotel, in this country, is what in France was known as a hotelerie, and in England as a common inn of that superior class usually found in cities and large towns." Cromwell v. Stephens, 2 Daly (N. Y.) 17, 21.

HOUSE.

By the ordinary use of the word "house," it is understood to mean a building. Jordan v. State, 142 Ind. 423.

The words "the house in which she now lives" are capable of a meaning wide enough to include barn as well as house. "An acre or more may pass by the name of a house." Dudley v. Milton, 176 Mass. (1900), 167, quoting Co. Lit. 5 b.

"The evidence showed that the house from which the goods were taken was 'the larger chicken-house' of the prosecutor. No further description is given, but we are obliged to conclude from this that the structure was a permanent building or fixture erected on the place, and falls within the ordinary acceptations of the term 'house.' The fact that it was erected for the safety of chickens can make no difference. It was none the less a house; and stealing chickens therefrom is as much larceny as stealing corn from a crib." Gardner v. State, 105 Ga. 662.

A "house" is a structure of a permanent character (1 Hale, 557), structurally severed from other tenements (and

usually, but not necessarily, under its own separate roof) that is used, or may be used, for the habitation of man, and of which the holding (as distinct from lodgings) is independent (Evans and Finch's Case, Cro. Car. 473; W. Jones, 394: Yorkshire Insrce. v. Clayton, 8 Q. B. D. 421; 51 L. J. Q. B. 82; man v. Royal Bank of Scotland, 50 L. J. Q. B. 670; 7 Q. B. D. 136: R. v. Usworth, 5 L. J. M. C. 139; 5 A. & E. 261; 6 N. & M. 811: Cook v. Humber, 31 L. J. C. P. 73; 11 C. B. N. S. 41, with which last case compare, Wilson v. Roberts, 31 L. J. C. P. 78; 11 C. B. N. S. 50, Henrette v. Booth, 33 L. J. C. P. 61; 15 C. B. N. S. 500, and Cuthbertson v. Butterworth, 38 L. J. C. P. 98; L. R. 4 C. P. 523: Nunn v. Denton, 14 L. J. C. P. 43; 7 M. & G. 66; 1 Lut. 178: Daniel v. Coulsting, 14 L. J. C. P. 70; 7 M. & G. 122; 1 Lut. 230: Monks v. Dykes, 8 L. J. Ex. 73; 4 M. & W. 567). It is not necessary that a "house," if adapted for residential purposes, should be actually dwelt in (Daniel v. Coulsting, sup.). It is true that in Surman v. Darley (14 L. J. M. C. 145; 14 M. & W. 181) Pollock, C. B., in commencing his judgment said,--"We all think that the term 'houses' prima facie means dwelling-houses;" but there the phrase to be construed was, "houses of the inhabitants" (in a Rating Act applicable to a particular district), and it was held that Covent Garden Theatre was not such a "house." But, besides that the word "houses" was there colored by its context "inhabitants," it could scarcely be contended that the theatre had ever been adapted for residential purposes, so that the proposition above stated on the authority of Daniel v. Coulsting, that a "house," as such, need not be actually dwelt in, would seem unimpeached.

"House" in s. 92, Lands C. C. Act, 1845, "comprises all that would pass by a grant of a house" (per Wood, V.-C., St. Thomas' Hospital v. Charing Cross Ry., 1 J. & H. 404): and, therefore, the word "house" there, comprises not only the curtilage, but also the garden and all that is necessary to the enjoyment of the house,—as distinct from what is

merely subsidiary to the personal use and enjoyment of a particular occupier,whether attached to the main building or not, even though purchased subsequently to the erection of the main building (Lloyd on Compensation, 5 Ed. 24: Dart, 245: St. Thomas' Hospital v. Charing Cross Ry., 30 L. J. Ch. 395; 1 J. & H. 400; 4 L. T. 13; 9 W. R. 411: Marson v. Lond. Chat. & D. Ry., 37 L. J. Ch. 483; L. R. 6 Eq. 101; L. R. 7 Eq. 546; 18 L. T. 317), and two tenements, internally inter-communicated, may form only one "house" (Harvie v. 8. Devon Ry., W. N. [74] 195). For the other cases hereon, and as to what is "part of a house" within the section; V. Kerferd v. Seacombe Ry., 36 W. R. 431; 57 L. J. Ch. 270; 58 L. T. 445; 4 Times Rep. 228: Littler v. Rhyl Imp. Commrs., W. N. (78) 219: Treadwell v. L. & S. W. Ry., W. N. (84) 233: Barnes v. Southsea Ry., 27 Ch. D. 536: Lloyd on Comp., 5 Ed. 24-27; Woolf & Middleton on Comp., 204-207; 1 Jarm. 778, 779 n. (o); Dart, 245-247; Seton, 1417, 1418.

In the maxim "every man's house is his castle," "house" means dwelling-house, and does not include other buildings such as barns or outhouses not connected with a dwelling-house. Hodder v. Williams (1895), 2 Q. B. 663, citing Semayne's Case (note), 1 Sin. L. C. 9th Ed. 115.

HOUSE OF COMMONS.

One of the constituent houses of the English parliament. This body is the the representatives of the people, as distinguished from the house of lords, which is composed of the nobility. It consists of six hundred and fifty-four members, elected as follows: Four hundred and ninety-six from England and Wales, fifty-three from Scotland, and one hundred and five from Ireland.

HOUSE OF LORDS.

One of the constituent houses of the English parliament. It is composed of supreme court of judicature in the king-

dom. It has no original jurisdiction, but is the court of appeal in the last resort, with a few exceptions, and under some limitations as to the right, from the inferior courts upon appeal or writ of error for mistake of law. Appeals lie to this tribunal from Scotch and Irish courts, in some cases. See St. 4 Geo. IV, c. 85, as to Scotch, and St. 39 & 40 Geo. III, c. 67, art. 8, as to Irish appeals.

This body, when sitting as a court of law, is presided over by the lord chancellor, whose attendance alone is in any respect compulsory, and is composed of as many of its members who have filled judicial stations as choose to attend. Three laymen also attend in rotation, but do not vote upon judicial matters. 11 Clark & F. 421. In the absence of the chancellor, deputy speakers, who were members of the profession, but not of the house, have been appointed. 3 Sharswood, Bl. Comm. 56.

HOUSE REFUSE.

Clinkers produced in the furnaces of the boilers in a steam laundry and used principally to heat the water used for the laundry business (but also to warm the laundry) are not "house refuse" within the meaning of a statute defining the duties of local authorities with reference to the removal of "house refuse." London, etc., Laundry Co. v. Willesden (1892), 2 Q. B. 271.

HOUSEHOLD.

The word "household" is equivalent to the word "family." It need not necessarily be a wife or child. 4 Words and Phrases, 3361. The People v. Tait, 261 Ill. 204.

Those who dwell under the same roof, and constitute a family. Webster. But it is not necessary that they should be under a roof, or that the father of the family be with it, if the mother and children keep together so as to constitute a family. 18 Johns. (N. Y.) 402.

This word is frequently used in bequests as a qualifying adjective e. g., "household,"—furniture; goods; stuff;

effects; property. Of these household furniture, and household goods (1 Jarm. 757 n.), and household stuff (Touch. 447) are synonyms. Either phrase will include all personal chattels that may contribute to the use or convenience of the householder or the ornament of the house, such as plate (Jesson v. Essington, Pre. Ch. 207), linen, china (both useful and ornamental), and pictures, also prize medals, coins or trinkets, if framed and hung or otherwise disposed for household ornament (Wms. Exs. 1191; 1 Jarm. 757 n.; Touch. 447: Field v. Peckett, 30 L. J. Ch. 813; 29 Bea. 573: Re Londesborough, 50 L. J. Ch. 9); or the clock of the house, if not a fixture (Slanning v. Style, 3 P. Wms. 336); but would it include a bust? Willis v. Curtois, 1 Bea. 195.

But the Touch-Stone lays it down (p. 447) that a bequest of household stuff will not comprise "apparel, books, weapons, tools for artificers, cattle, victuals, corn, plow-geere, and the like;" a restriction equally applicable to household "goods" or "furniture" (Slanning v. Style, 3 P. Wms. 334: Bridgman v. Dove, 3 Atk. 202: Kelly v. Powlet, Ambl. 611: Porter v. Tournay, 3 Ves. 311). But in Ouseley v. Anstruther (10 Bea. 462), and Hutchinson v. Smith (11 W. R. 417) books, and (in the latter case) consumable stores (wines) passed by force of the general intention of the will although there was no more appropriate word to carry them than "furni-On the other hand, in Manton v. Tabois (54 L. J. Ch. 1008; 30 Ch. D. 92), a bequest of "furniture, goods and chattels" was held not to include jewelry, guns, pistols, tricycles, or scientific instruments.

In Peto v. Grissell (5 L. J. Ch. 286) and Paton v. Sheppard (10 Sim. 186), Shadwell, V.-C., held that tenant's fixtures in a leasehold house passed as "household furniture:" but Jessel, M. R., refused to follow that ruling. Finney v. Grice, 48 L. J. Ch. 247; 10 Ch. D. 13.

"Household effects" will comprise all that household "furniture," "goods," or "stuff" would carry; and it will also comprise books and consumable stores, and

also weapons if kept for domestic defense (Cole v. Fitzgerald, 1 Sim. & Stu. 189; 3 Russ. 301). By the case lastly cited it was also determined that the term "household effects" included a pair of pistols, lathes and apparatus for turning, with a quantity of ivory, mahogany, etc., a sawing machine, a vise and anvil, a copying-machine and an organ, and a hay-stack if retained exclusively for home consumption (See Re Labron, infra); but that it did not include a pony or a cow, or some fowling-pieces that apparently were not used for domestic defense. Whether the V.-C. decided that a parrot was included, is a matter of dispute between the reporters (see note, 3 Russ. 301), In Re Labron, Kay, J., decided that a bequest of "household effects" would carry hay-ricks, chicken and sheeptroughs, store pigs, poultry and carriages that were on the grounds (40 acres in extent) appertaining to the dwellinghouse of the testator (29 S. J. 147); but not a horse, cows, or sheep. Ib., on a second application, 1 Times Rep. 248.

Articles of a "household" nature will pass under that description, although they may never have been used by the testator, nor even kept in his house. Pellew v. Horsford, 25 L. J. Ch. 352.

Neither of the terms now under definition will include articles of trade (Pratt v. Jackson, 2 P. Wms. 302: Le Farrant v. Spencer, 1 Ves. sen. 97; see note, 24 L. J. Ch. 526; Wms. Exs. 1191; Manning v. Purcell, 24 L. J. Ch. 522; 2 Sm. & G. 284: Fitzgerald v. Field, 1 Russ. 427); nor farming stock (Stone v. Parker, 29 L. J. Ch. 874; 1 Dr. & Sm. 212); nor articles exclusively of personal ornament. Tempest v. Tempest, 2 K. & J. 635.

"Household property," held to include leaseholds. Harris v. Darley, W. N. (73) 137.

HOUSEHOLD FURNITURE.

The term "household furniture" includes all personal chattels which may contribute to the use or convenience of the householder, or the ornament of the house, such as plate, linen, china and pic-

tures, and may be construed to include silverware. McClellan v. Powell, 109 Ill. App. 224.

HOUSEHOLD GOODS.

See also Household.

The term "household goods" has been frequently construed with reference to its meaning when used by testators, and also with reference to its significance when employed in statutes. It is said that in wills this expression will pass all articles of the household which are not consumed in their enjoyment, that were used or purchased, or otherwise acquired by the testator for his house, but not goods in the way of his trade. 1 Jarman on Wills, Perkins' Ed., 589.

Substantially the same definition is given in Anderson's Dictionary of Law, and is said to be the true meaning when such expression is used by a railroad in its statement that household goods will be transported at a certain rate of fare. Smith v. Findley, 34 Kas. 316.

The term "household goods" is more extensive than the expression "household furniture." Canagy v. Woodcock, 2 Mumford (Va.) 234.

The expression "household goods" was held in Pratt v. Jackson, 3d Brown's Parliamentary Cases, 199, not to include bedding not in the house of the testator, but used by him in a hospital for the enjoyment of sick and wounded seamen.

Section 2 of an act to regulate the foreclosure of chattel mortgages on household goods, wearing apparel and mechanic's tools, in force July 7, 1889, is as follows: "No chattel mortgage executed by a married man or married woman on household goods shall be valid unless joined in by the husband or wife, as the case may be." It has been held by the Supreme Court, in Gaines v. Williams, 146 Ill. 458, that section 1 of this act, forbidding the foreclosure of a chattel mortgage on the necessary household goods, etc., of any person or family, except in a court of record, is to be liberally construed in favor of the mortgagor, and it would seem that section 2 of the act is to be construed in the same manner. The term "household goods," as used in this act, means such goods, as, being suitable to the condition and station in life of the mortgagor and the way he lives, are used by him in his household for personal, home or household convenience, and goods kept for mere purposes of trade or business, are not within the meaning of the act. Peter Schoenhofen Brewing Co. v. Merrion, 67 Ill. App. 125, 126.

HOUSEHOLD GOODS AND OTHER CHATTEL PROPERTY.

Used in a Will.

The words "other chattel property," following the words "household goods," should be limited to chattel property of the same character as household goods, under the rule of ejusdem generis. Where there is a general description, coupled with an enumeration of specific things or kinds of property, the general description is commonly understood to embrace and include only those things of a like kind with those enumerated. Strickland v. Strickland, 271 Ill. 617.

HOUSEHOLDER.

In General.

The word, "householder," means the head, or person, who has the charge of the family, and does not apply to the subordinate members or inmates of the household. Bowne v. Witt, 19 Wend. (N. Y.) 475; Thompson on Homestead and Ex., p. 58. It was held in Zander v. Scott, 165 Ill. 51, that a householder may not necessarily be the head of a family; but in that case it appeared that the husband and wife lived together, and had children, and the wife owned the fee of the homestead property; and it was held, that she was a householder having a family, although not the head of the family. The ordinary signification, however, of a householder is, that such a person is the head of the family, upon whom the other members are dependent. The family. within the meaning of the Homestead law, consists of those members of the household, who are dependent upon the householder for support, or to whom the householder owes some duty. Holnback v. Wilson, 159 Ill. 148. To constitute a homestead, there must be a householder and a family. There cannot be two householders. Brokaw v. Ogle, 170 Ill. 126.

A person having and providing for a household, is a householder. Griffin v. Sutherland, 14 Barb. (N. Y.) 458.

"Householder," (e. g., in s. 8, 26 G. 3, c. 38) though it be not of so strict a sense as "housekeeper," will not include a lodger or temporary inmate, but it will include a partner daily resorting to his firm's counting-house in the place referred to, the dwelling-part of which counting-house is occupied by a servant of the firm. R. v. Hall, 1 B. & C. 123.

Exemptions Act.

A person owning a dwelling house that is capable of being occupied for that purpose is a "householder," within the meaning of section 1 of the Exemptions Act of 1874, relating to homesteads. Rock v. Haas, 110 Ill. 533.

Homestead Act.

Residence upon the land sought to be exempted makes the resident a house-holder within the meaning of section 1 of the Homestead Act. Kitchell v. Burgwin, 21 Ill. 45.

HOUSEHOLDER HAVING A FAMILY.

"Section 1 of the Homestead Act provides 'that every householder having a family shall be entitled to an estate of homestead, to the extent in value of \$1,000, in the farm or lot of land and buildings thereon owned or rightly possessed by lease or otherwise, and occupied by him or her as a residence.' In Holnback v. Wilson, 159 Ill. 148, in considering the question who might be regarded as a householder, we said (p. 154): bachelor or a widower who occupies a home, as the head of a family, on land which he desires to set apart as a homestead, who has living with him a mother, father, sisters or brothers who are dependent upon him for support, and where

there is a corresponding duty of support resting on him, might properly be regarded as a householder having a family, within the meaning of the statute.' The defendant in error, Jonathan Garner, occupied a house with two sisters. He and they constituted the family. He, as appears from the evidence, was the head of the family and the two sisters were supported by him. We think, therefore, under the facts as they appeared in evidence, the defendant in error was a householder having a family, within the meaning of the statute." Wike Bros. v. Garner, 179 Ill. 264.

No general rule has or can be laid down by which to determine, in every case, who is to be regarded as a householder, having a family, within the meaning of the statute. A careful reading of the cases leads to the conclusion that there must exist on the part of a householder a legal or moral duty to support one, claimed to be a member of his or her family, and a corresponding dependence on the part of such an one, upon such householder. Brokaw v. Ogle, 170 Ill. 115; Stodgell v. Jackson, 111 Ill. App. 257, 258.

After the homestead estate has once been acquired under the statute, it continues in the original owner so long as he occupies the homestead premises, although he may have ceased to be a householder having a family, and it will only become extinguished in some one of the modes mentioned in the statute, of which ceasing to be a householder having a family is not one. Slattery v. Keefe, 201 Ill. 486.

HOUSE-SLANT.

A "Y" on the sewer pipe of the same thickness as the pipe. Sheedy v. Chicago, 221 Ill. 117.

HOW.

An instruction holding that "the jury are the sole judges of the questions of fact in this case, and the court does not intend to instruct the jury how they shall find any question of fact in this case," is

not subject to the objection that the word "how" would lead the jury to believe they could decide the facts in any manner they saw fit, without reference to the instructions or the evidence. South Chicago Ry. Co. v. McDonald, 196 Ill. 205.

HUE AND CRY.

In old English law. A pursuit of one who had committed felony, by the high-way.

The meaning of "hue" is said to be "shout," from the Saxon huer; but this word also means "to foot," and it may be reasonably questioned whether the term may not be "up foot and cry;" in other words, run and cry after the felon. We have a mention of hue and cry as early as Edward I; and by the Statute of Winchester (13 Edw. I), "immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and county to county, by horsemen and footmen, to the seaside. constable (the person being described, etc.) is to call upon the parishioners to assist him in the pursuit in his precinct, and to give notice to the next constable, who is to do the same as the first, etc. If the county will not answer the bodies of the offenders, the whole hundred shall be answerable for the robberies there committed, etc." A person engaged in the hue and cry apprehending a felon was, on the felon's conviction, entitled to forty pounds, on a certificate of the judge or justice before whom there was conviction, as well as to the felon's horse, furniture, arms, money, and other goods taken with him, subject to the rights of other persons therein. Wood, Inst. 370-373. See 2 Hale, P. C. 100.

HULL AND MACHINERY.

The words "hull and machinery" in an insurance on a steamship are not equivalent to the word "ship," and do not—whether the word "ship" does so or does not—cover coals, provisions, or stores. Roddick v. Indemnity, etc., Marme Ins. Co. (1895), 2 Q. B. 380.

HUMAN IDENTITY.

A great deal has been written and said in the past concerning the doubtful nature of testimony identifying persons. Men's faces, like their handwriting, may be so similar that the keenest observer may be baffled in seeking to discover differences. "The witness," says Wharton, "is asked how he knows that the prisoner at the bar is the person who fired the fatal shot, and his answer is, 'I infer it from a similarity of eyes, of hair, of height, of manner, of expression, of Human identity, therefore, is an inference drawn from a series of facts. some of them veiled, it may be, by disguise and all of them more or less varied by circumstances." Wharton on Crim. Evidence,-8th ed.,-sec. 13. In his charge to the jury in the Tichborne case Lord Cockburn said: "Frequently a man is sworn to who has been seen only for a moment. A man stops you on the road, puts a pistol to your head and robs you of your watch or purse; a man seizes you by the throat, and while you are half strangled his confederate rifles your pockets; a burglar invades your house by night, and you have only a rapid glance to enable you to know his features. In all these cases the opportunity of observing is so brief that mistake is possible, and yet the lives and safety of people would not be secure unless we acted on the recollection of features so acquired and so retained, and it is done every day." Wharton on Crim. Evidence,-8th ed.—sec. 803, note; Jones on Evidence,— 2d ed.—sec. 361. In Ogden v. People. 134 Ill. 599, the accused was charged with robbery. On the trial one Martin and his wife and daughter, who had known the accused for ten years, testified that he came to their house at night with his face wrapped in red flannel and ordered them to deliver up their money. They testified positively to his identification, recognizing his voice. The court held the testimony competent and affirmed the judgment. It has been frequently held that a witness may testify to a person's identity from his voice or from observing his stature, complexion or other marks. Sec. 1 Wigmore on Evidence, sec. 660, and authorities cited in note 1; State v. Lytle, 117 N. C. 799. This testimony was competent. The weight to be given it was a question for the jury, in view of all the other circumstances and evidence in the case. The People v. Jennings, 252 Ill. 545, 546.

HUMBUG.

"Humbug" is an imposition, imposture, deception; and as a verb, signifies to impose upon, to cozen, to swindle; all implying intention to misrepresent, by the assertion of what is not the actual condition or the suppression or concealment of what is. Nolte v. Herter, 65 Ill. App. 432, 433.

HUNDRED.

In English law. A division of a county, which some make to have originally consisted of one hundred hides of land; others of ten tithings, or one hundred free families.

It differed in size in different parts of England. 1 Steph. Comm. 122. In many cases, when an offense is committed within a hundred, the inhabitants are liable to make good the damage if they do not produce the offender. See 12 East. 244.

This system was probably introduced by Alfred (though mentioned in the Poenitentiae of Egbert, where it seems to be the addition of a later age), being borrowed from the continent, where it was known to the Franks, under the name centena, in the sixth century. See Charlemagne, Cap. lib. 3, c. 10.

It had a court attached to it, called the "hundred court," or "hundred lagh," like a court baron, except in its larger territorial jurisdiction. It was governed by the hundredary (hundredarius). 9 Coke, 25. The jurisdiction of this court has devolved upon the county courts. Jacob; Du Cange. Hundred penny was a tax collected from the hundred by its lord or by the sheriff. Hundred setena signified the dwellers in the hundred. Charta Edg. Reg. Mon. Angl. tom. 1, p. 16.

"As ten families of freeholders made up a town or tithing, so ten tithings composed a superior division called a hundred, as consisting of ten times ten families." 1 Bl. Com. 115.

HUNTING.

The grant or reservation of "hunting, shooting, fishing and sporting" includes all things generally hunted, shot, fished, or sported after, in contradistinction to small birds and things of a similar character, e. g., rats and sparrows (per Willes, J., Jeffryes v. Evans, 34 L. J. C. P. 261; 19 C. B. N. S. 264). That case decided that rabbits would be included in such a reservation. It also decided that a covenant for quiet enjoyment in such a grant or reservation, does not imply any undertaking restricting the ordinary use of the land. See Gearns v. Baker, 44 L. J. Ch. 334; 10 Ch. 355.

The grant of a right to sport without more, would probably be held not to exclude the grantor. Bloomfield v. Johnston, 8 Ir. R. C. L. 68.

"The liberty of fowling has been decided to be a profit a prende, and may be prescribed for as such (Davies' Case, 3 Mod. 246). The liberty to Hawk is one species of ancupium (Manwood, c. 18, s. 10, p. 107), the taking of birds by hawks, and seems to follow the same rule. The liberty of fishing appears to be of the same nature; it implies, that the person who takes the fish, takes for his own benefit: it is common of fishing. The liberty of hunting is open to more question, as that does not of itself import the right to the animal when taken; and if it were a license given to one individual either on one occasion, or for a time, or for his life, it would amount only to a mere personal license of pleasure, to be exercised by the individual licensed" (per Parke, B., Wickham v. Hawker, 10 L. J. Ex. 159, 160; 7 M. & W. 72); but even in the latter case if the grant were to the grantee "his heirs and assigns." or to be exercised by him or his "servants" it would be a profit a prende. Ib.

HUSBAND.

A gift to A. (a woman) for life, remainder, "in trust for any husband with whom she may intermarry, if he shall survive her:" Held, that a man whom A, had married but from whom she had been divorced and who survived her. was entitled as A.'s "husband," although he had married again before her death (Re Bullmore, 52 L. J. Ch. 456; 22 Ch. D. 619). But in Hitchins v. Morrieson (40 Ch. D. 32; 37 W. R. 91), Kay, J., said he should certainly have decided Re Bullmore otherwise, and refused to follow and apply it to a similar bequest in which however the word was "wife" instead of "husband."

A gift to an unmarried woman for life, remainder to her husband in fee, gives a vested remainder in fee to her first husband. Radford v. Willis, 41 L. J. Ch. 19; 7 Ch. 7.

HUSBAND AND WIFE.

While the term "husband and wife" has the primary meaning only of those persons who are actually and lawfully living together as husband and wife, yet it may be extended to cover persons who were married within one year after the reputed wife procured a divorce from her former husband, in violation of a law of the state, where such was the intention of the testator. McDole v. Thurm, 276 Ill. 200.

HUSBANDRY.

"What is the defendant doing which is not according to the best rules of husbandry practiced in the neighborhood?" One must define these words with reference to the changing circumstances of time and life. It is impossible to construe words of this kind as if they were technical words having fixed meanings which are never to change at all, and especially when you have as a guide the stipulation that the rules to be followed are those which are practiced in the neighborhood. Husbandry is equally applicable to a market garden as to a farm, arable or pasture, and one must regard what is going on in the neighborhood. Per Kekewich, J., in Meux v. Cobley (1892), 2 Ch. 253. The | III. 358.

question was whether there had been a breach of covenant or waste in turning a farm near London into a market garden and erecting glass houses for the growing of tomatoes, etc., and the court held that there was no breach, and that if there was technical waste, it was ameliorating waste for which there was no liability in damages and no remedy by injunction.

HYDRAULIC TEST.

A test generally, if not universally, used by manufacturers to ascertain if there are any defects in the boilers and flues. McInerney v. Western, etc., Co., 249 Ill. 245.

I.

See I or We; We.

I. C. R. R. STREET.

A city ordinance providing for a sidewalk from a named point to "I. C. R. R. Street" is not rendered void for uncertainty as to the terminus of the proposed improvement by the fact that there is no such street where it appears by reference to the plat that upon it appear lines showing a crossing and the word "I. C. R. R. Right of Way." Nicholes v. People, 171 III. 377.

I. E.

An abbreviation for "id est," that is; that is to say.

I HAVE HEREUNTO SET MY HAND.

Will.

A will containing the clause "I have hereunto set my hand and seal" does not necessarily import that a testatrix signed the will with her own hand, and means no more than that she had signed her name or caused it to be signed, to the instrument. Elston v. Montgomery, 242

I OR WE.

The legal import of the promissory note of a corporation, reading, "Sixty days after date I or we promise to pay," etc., is not affected by the use of the words "I or we" in the body of the note if the note is signed by the corporation acting by its officer or officers, there being no personal pronoun which is properly adapted to use by a corporation in making a note. Williams v. Harris, 198 Ill. 505.

I. O. U.

An I. O. U. not given in acknowledgment of a debt due, nor as the result of an account stated between the parties, is not evidence under a count on an account stated. (Lemere v. Elliott, 30 L. J. Ex. 350; 6 H. & N. 656.

Merely an acknowledgment of the debt, and neither a promissory note nor a receipt. Fisher v. Leslie, 1 Esp. 427.

I WILL SEE YOU PAID.

These words amount, prima facie, to an original and independent agreement to pay, as distinguished from a guarantee for payment. Birkmyr v. Darnell, 1 Salk. 27; 1 Sm. L. C. 335: Lakeman v. Mountstephen, 43 L. J. Q. B. 188; L. R. 7 H. L. 17.

IDENTIFIES.

"It is contended that the meaning of the word 'identify' [in the charge of the trial judge, 'she identifies them here at the trial, without hesitation'] is to prove identical, or to prove to be the same, and that therefore the remark was an expression of opinion in regard to the credibility of the witness, and not a mere statement of a part of the evidence. Pub. Sts., c. 153, § 5, Commonwealth v. Foran, 110 Mass. 179, 180. It is not disputed that she testified without hesitation to her identification of the defendants as her assailants, and we think it clear that the judge used the word 'identifies' in reference to her testimony in a colloquial sense as meaning 'asserts their identity." Commonwealth v. Flynn, 165 Mass. 153.

IDES.

(Lat.) In civil law. A day in the month from which the computation of days was made.

The divisions of months adopted among the Romans were as follows: calends occurred on the first day of every month, and were distinguished by adding the name of the month; as, calendis Januarii, the first of January. The nones occurred on the fifth of each month, with the exception of March, July, October, and May, in which months they occurred on the seventh. The ides occurred always on the ninth day after the nones, thus dividing the month equally. In fact, the ides would seem to have been the primal division, occurring in the middle of the month, nearly. Other days than the three designated were indicated by the number of days which would elapse before the next succeeding point of division. Thus, the second of April is the quarto nonas Aprilis; the second of March, the sexto nonas Martii: the eighth of March, octavius idus Martii; the eighth of April, sextus idus Aprilis; the sixteenth of March, decimus septimus calendis Aprilis.

This system is still used in some chanceries in Europe, and we therefore give the following:

Table of the Calends, Nones, and Ides.

Jan., Aug.,	March, May,	April, June,	Feb. 28,
Dec.,	July, Oct.,	Sept., Nov.,	bissextile,
31 days	31 days	30 days	29 days
1 Calendis 2 4 Nonas 3 Nonas 4 Frid. Non 5 Nonis 6 8 Idus 7 7 Idus 8 6 Idus 9 5 Idus 9 5 Idus 1 3 Idus 2 Prid. Idus 3 Idibus 3 Idibus 3 Idibus 1 1 Cal. 8 15 Cal. 8 15 Cal. 8 15 Cal. 1 12 Cal. 1 12 Cal. 1 12 Cal. 1 12 Cal. 1 15 Cal. 6 7 Cal. 7 Ca	Calendis 6 Nonas 6 Nonas 4 Nonas 4 Nonas 3 Nonas Prid, Non. Nonis 8 Idus, 7 Idus 6 Idus 5 Idus 5 Idus 17 Cal. 16 Cal. 15 Cal. 11 Cal. 12 Cal. 12 Cal. 13 Cal. 14 Cal. 15 Cal. 16 Cal. 17 Cal. 18 Cal. 18 Cal. 19 Cal. 10 Cal. 10 Cal. 11 Cal. 12 Cal. 13 Cal. 14 Cal. 15 Cal. 16 Cal. 17 Cal. 18 Cal. 19 Cal. 10 Cal. 10 Cal. 11 Cal. 12 Cal. 13 Cal. 14 Cal. 15 Cal. 16 Cal. 17 Cal. 18 Cal. 18 Cal. 19 Cal. 19 Cal. 10 Cal. 10 Cal. 11 Cal. 12 Cal. 13 Cal. 14 Cal. 15 Cal. 16 Cal. 17 Cal. 18 Cal. 18 Cal. 19 Cal. 19 Cal. 10 Cal. 10 Cal. 11 Cal. 12 Cal. 13 Cal. 14 Cal. 15 Cal.	Calendis 4 Nonas 4 Nonas 7 Nonas Prid. Non Nonis 8 Idus 7 Idus 6 Idus 5 Idus 4 Idus 4 Idus 18 Cal. 116 Cal. 116 Cal. 11 Cal. 12 Cal. 11 Cal. 12 Cal. 17 Cal. 6 Cal. 7 Cal. 7 Cal. 7 Cal. 7 Cal. 6 Cal. 7 Cal. 7 Cal. 7 Cal. 8 Cal. 7 Cal. 7 Cal. 9 Cal. 7 Cal. 7 Cal. 8 Cal. 7 Cal. 9 Cal. 7 Cal. 7 Cal. 8 Cal. 7 Cal. 7 Cal. 8 Cal. 7 Cal. 8 Cal. 7 Cal. 9 Cal. 7 Cal. 8 Cal. 7 Cal. 9 Cal. 7 Cal. 8 Cal. 7 Cal. 9 Cal. 9 Cal. 7 Cal. 8 Cal. 9 Cal. 9 Cal. 9 Cal.	Calendis 4 Nonas 7 Nonas 8 Idus 7 Idus 6 Idus 5 Idus 6 Idus 6 Idus 1 Idu

IDIOCY.

In medical jurisprudence. A form of insanity, resulting either from congenital defect, or some obstacle to the development of the faculties in infancy.

It is an imbecility or sterility of mind, and not a perversion of the understanding. Chit. Med. Jur. 327, note (s) 345; 1 Russ. Crimes, 6; Bac. Abr. "Idiot" (A); Brooke, Abr.; Co. Litt. 246, 247; 3 Mod. 44; 1 Vern. 16; 4 Coke, 126; 1 Bl. Comm. 302.

That condition in which the human creature has never had, from birth, any the least glimmering of reason; and is utterly destitute of all those intellectual faculties by which man, in general, is so eminently and peculiarly distinguished. It is not the condition of a deranged mind, but that of a total absence of all mind. Owing's Case, 1 Bland. Ch. (Md.) 386.

Idiocy, sometimes called fatuitas, is usually a congenital disorder, consisting in a defect or sterility of the intellectual powers, not like lunacy or madness, which is a perversion of intellect. Stewart's Exrs. v. Lispenard, 26 Wend. (N. Y.) 314.

DIOT.

A man is not an idiot, if he have any glimmering of reason, so that he can tell his parents, his age, or the like common matters. Clark v. Robinson, 88 Ill. 502.

A natural fool; one who hath no understanding from his nativity, and therefore is, by law, presumed never likely to attain any. Clark v. Robinson, 88 Ill. 502.

Many medico-legal writers apply the term "idiot" to one who does manifest capacity to receive instruction, although in a low degree. Clark v. Robinson, 88 Ill. 502.

IF.

"If," in a stipulation, will generally create a condition precedent. Bromfield v. Crowder, 1 B. & P. N. S. 313, 326; Festing v. Allen, 12 M. & W. 289; Duffield v. Duffield, 3 Bli. N. S. 260, 331.

"If" may create a reservation; e. g. of mines and minerals in an inclosure act, under these words, "If the lord shall enter on any inclosure for the purpose of getting any coals or other minerals." Micklethwait v. Winter, 20 L. J. Ex. 313, 6 Ex. 644.

IF ANY.

"The words here require the payment of damages, 'if any.' The subjunctive or contingent form if does not lessen the import of the word 'any,' which means indefinite results or amounts, and consequently means all damages." Buckwalter v. Black Rock Bridge Co., 38 Pa. St. 287.

The words "if any," used in section 17 of the Levee Act with reference to the difference between damages and benefits, indicates that it is contemplated by the statute that there are or may be cases of an inequality of benefit and damage. Lovell v. Drainage District, 159 III. 199.

Section 20 of the Farm Drainage Act, providing that the jury shall return as their verdict "the amount of damages found, if any" as the result of the taking, does not, by the expression "if any," authorize the jury to find that plaintiff was entitled to no damages for the land actually taken. Drainage Commissioners v. Volke, 163 Ill. 250.

IF ANY SHALL SURVIVE.

A deed of trust creating an estate for life in real estate, and providing that on the death of the life tenant the estate be conveyed to the children of such life tenant "if any shall survive," creates, by the quoted expression, a condition precedent to the vesting of the estate in the children, who therefore take a contingent remainder under the deed of trust. Temple v. Scott, 143 Ill. 299.

IF APPROVED.

"We do not think the qualification, 'if approved,' [in a stipulation on the back of an application for insurance, that if the application is approved it will bear date of the reception of the application]

reserves to the company the arbitrary right of setting aside, at pleasure, any contract that their agents may make, no matter how fair it may be, or how strictly it may comply with their terms of insurance, or with their directions to their agents. They, no doubt, like any other party, have the right to defend themselves against fraud or mistake, and in such a case they would not bind themselves by ratifying such contract by issuing a policy. We think this is what is referred to, and nothing more." Palm v. Medina County Mut. Fire Ins. Co., 20 Ohio 538.

IF AT ALL.

The words "if at all" as used in a plea of the Statute of Limitations, do not traverse the cause of action, so as to prevent the plea from operating as an admission that the cause of action accrued to the plaintiff. Fish v. Farwell, 160 Ill. 241.

IF IT APPEARS.

Section 215 of the Criminal Code, providing a penalty for the failure of public officers having the custody of funds to pay over the same in certain cases, and providing that the section shall not operate "if it appears that such failure or refusal was caused," etc., clearly indicates, by the expression "if it appears," an intention to allow the benefit of the defense named. and does not require the state to allege and prove a negative. Dreyer v. People, 188 Ill. 46.

IF NECESSARY.

"Plaintiffs in error insist that the words 'if necessary' do not mean an actual or present necessity or immediate need, but should be construed to mean convenient, useful or essential. The authority to sell real estate under the power could not arise unless there was some necessity for it. The words 'if necessary' must be given some meaning. They were a limitation upon the power conferred, and the donee of the power could only lawfully exercise it in accordance with the conditions and limitations imposed." Rodisch v. Moore, 266 Ill. 110.

of the third provision of the will contains the following: 'And, if necessary for any or all of these purposes, he may draw upon the principal of the property hereby bequeathed.' This clause of the will, in arriving at the intention of the testatrix, must be considered in connection with the other provisions of the will. By the second clause the trustee was required to handle the property to the best advantage to secure the largest income. The object the testatrix had in mind by incorporating this provision in the will was to obviate a necessity of resorting to the principal fund. The trustee was not authorized to resort to the principal fund unless it was necessary. The word 'necessary,' as here used, has an important bearing. No doubt, if the income, after a judicious management of the property, became insufficient to furnish the trustee a comfortable living, then he might draw upon the principal; but could it become necessary, within the meaning of the will, for him to take the principal estate and give it away for a charitable or benevolent pur-We do not think a necessity could arise for such a purpose. It cannot be held that the trustee had the right to take the principal of the property and donate it to a church, and thus cut off the remainder-men, without disregarding the positive requirement contained in the second clause, to handle the property so as to secure the largest income. We think, therefore, that the reasonable construction to be placed on the will, when all of its provisions are considered, is, that the trustee was only authorized to resort to the principal of the property when it was necessary to do so for his maintenance and support." Lehnard v. Specht, 180 III. 214.

A defendant under terms to take "short notice of trial, if necessary," is not entitled to full notice, if the plaintiff, using reasonable diligence, is unable to give it. Drake v. Pickford, 15 M. & W. 607, 15 L. J. Ex. 346; Pretty v. Nauscawen, 43 L. J. Ex. 3, L. R. 9 Ex. 42.

IF THERE IS ANYTHING LEFT.

A devise to a widow for life "and after "It will be observed that the last part | her death, if there is anything left" implies a power of disposition by the widow of the whole property devised. Henderson v. Blackburn, 104 Ill. 232.

IF UNMARRIED.

Section 5 of the act of 1867, providing that husband and wife shall be competent witnesses against each other except "in cases where the wife would, if unmarried, be plaintiff or defendant" does not apply, by the words "if unmarried," to cases where the woman has been married but is subsequently divorced, or where the husband is dead, but simply to cases where she has never been married. Smith v. Long, 106 Ill. 488.

IF WE FIND THEY DO THE WORK.

A letter ordering smoke consumers contained the following, among other clauses: "If we find they do the work, and we have no trouble from the smoke inspector, we will take same and pay the sum of one hundred dollars for both devices; if we do not take the same, you are to remove them without any expense to us and at a convenient time." Under such an order, if the consumers in fact "did the work" the person ordering would be bound to so find and to take and pay for them. Garden City Wire Co. v. Kause, 67 Ill. App. 110.

IF YOU BELIEVE FROM THE EVIDENCE.

The expression "if you believe from the evidence" is the equivalent of and means the same as the expression "if you believe from a preponderance of the evidence." Donk Bros. Coal Co. v. Thill, 228 Ill. 233; Ducharme v. St. Peter, 135 Ill. App. 532.

IGNORANCE.

"There are certain classes of cases in which it may be said that mistake, or at any rate ignorance, is the condition of acquiring legal or equitable rights. These are the exceptional cases in which an apparent owner having a defective title,

or even no title, can give to a purchaser a better right than he has himself, and which fall partly under the rules of law touching market overt and the transfer of negotiable instruments, partly under the rule of equity that the purchase for valuable consideration without notice of any legal estate, right, or advantage is 'an absolute unqualified, unanswerable defence' against any claim to restrict the exercise or enjoyment of the legal rights so acquired." Pollock Princ. Cont. 427, citing Pilcher v. Rawlins (1872) L. R. 7 Ch. 259, 269, 41 L. J. Ch. 485, per James L. J.; Blackwood v. London, etc., Bank of Australia (1874) L. R. 5 P. C. 92, 111, 43 L. J. P. C. 25; Per Lord Westbury, Phillips v. Phillips (1861) 4 D. F. J. 208, 31 L. J. Ch. 321.

IGNORANCE OF LAW.

Ignorance of the laws of one's own country or state. Marshall v. Coleman, 187 Ill. 581.

IGNORANTIA JURIS NON EXCUSAT.

"The true meaning of that maxim is that parties cannot excuse themselves from liability from all civil or criminal consequences of their acts by alleging ignorance of the law, but there is no presumption that parties must be taken to know all the legal consequences of their acts, and especially where difficult questions of law, or of the practice of the court are involved." Lord Fitzgerald in Seaton v. Seaton, 13 App. Cas. 78.

ILL.

The power (s. 17, 11 & 12 V. c. 42) to read a deposition if the deponent is "so ill as not to be able to travel," may arise if the source of illness is pregnancy (R. v. Wellings, 47 L. J. M. C. 100, 3 Q. B. D. 426); or paralysis of speech (R. v. Cockburn, 26 L. J. M. C. 136; Dears. & B. 203); but not in a case of mere nervousness at the thought of appearing in court (R. v. Farrell, 38 J. P. 390), or absence abroad (R. v. Austin, 25 L. J.

M. C. 48; Dears. 612). See R. v. Stephenson, 31 L. J. M. C. 147; L. & C. 165.

ILLEGAL.

The word "illegal" used in the statute punishing the crime of conspiracy is synonymous with unlawful, and means contrary to any law, whether criminal or civil. 2 Bishop's Crim. Law, Secs. 171, 178; 6 Am. and Eng. Ency. Law (2d Ed.), 850; Webster's Dictionary; O'Donnell v. The People, 110 Ill. App. 263; Chicago, Wilmington & Vermillion Coal Co. v. The People, 114 Ill. App. 106.

ILLEGALLY DEALING.

Illegally dealing, within the meaning of a statute forbidding dealing on unlicensed promises, extends to buying as well as selling. There must be two parties to what is called a "deal," as man cannot deal with himself. McKenzie v. Day, [1893] 1 Q. B. 289.

ILLNESS.

"Illness" as used in questions to an applicant for life insurance, means a disease or ailment of such a character as to affect the general soundness and healthfulness of the system seriously, and not a mere temporary indisposition which does not tend to undermine and weaken the constitution of the insured. Billings v. Metropolitan Ins. Co., 70 Vt. 482.

ILLUSION.

A species of mania, in which the sensibility of the nervous system is altered, excited, weakened, or perverted.

The patient is deceived by the false appearance of things, and his reason is not sufficiently active and powerful to correct the error; and this last particular is what distinguishes the sane from the insane. Illusions are not unfrequent in a state of health, but reason corrects the errors, and dissipates them. A square tower, seen from a distance, may appear round, but on approaching it, the error is corrected.

A distant mountain may be taken for a cloud, but as we approach we discover the truth. To a person in the cabin of a vessel under sail, the shore appears to move; but reflection and a closer examination soon destroy this illusion. An insane individual is mistaken on the qualities, connections, and causes of the impressions he actually receives, and he forms wrong judgments as to his internal and external sensations; and his reason does not correct the error. 1 Beck, Med. Jur. 538; Esquirol, tom. 1, p. 202; Dict. des Sciences Medicales, "Hallucination."

ILLUSORY.

Where, by the terms of an instrument, a power is given to appoint property to or among certain persons, the amount that each is to receive being left to the discretion of the donee of the power, and where none of the beneficiaries can be excluded, and where a mere nominal share is appointed to one or more of them, such an appointment is termed illusory. 2 Am. & Eng. Ency. of Law,—2d ed.,—p. 475; 1 Bouvier's Law Dic., p. 769; Hawthorn v. Ulrich, 207 Ill. 436.

IMBASING.

The act of reducing coin below the standard alloy. See 1 Hale, P. C. 102.

IMBECILE.

An "imbecile" is defined by Webster as one destitute of strength, either of body or of mind,—weak, feeble, impotent, decrepit. Campbell et al. v. Campbell, 130 Ill. 477.

IMBECILITY.

The quality of being imbecile—feebleness of body or mind. Campbell v. Campbell, 130 Ill. 477.

IMITATION BUTTER.

"Imitation butter," within the meaning of the Criminal Code, includes every article, substitute or compound other than that which is produced from pure milk or cream therefrom, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or its cream. Act of 1897, § 1 (J. & A. ¶ 3457).

IMMATERIAL ISSUE.

"An immaterial issue is, where that which is materially alleged by the pleadings is not traversed, but an issue taken on such a point as will not determine the merits of the case. A verdict can not help an immaterial issue. Tidd's Practice, side page 921. Such an issue being immaterial is not aided by a verdict. Young v. Paris, 69 Ill. App. 449. Teutonia Ins. Co. v. Beard, 74 Ill. App. 498.

IMMEDIATE.

Acting with nothing interposed or between, or without the intervention of another object as a cause, means, medium or condition; producing its effect by direct agency. Preferred, etc., Ass'n v. Jones, 60 Ill. App. 108.

Having nothing intervening either as to time, place or action; direct; proximate. Streeter v. Streeter, 43 Ill. 165.

The term "immediate" seems to offer some difficulty, its signification generally being, "not separated from its object by any medium; directly related; nearest." Old People's Home Society v. Wilson, 176 III. 99.

The Century defines the term "immediate" as follows: "Not separated from its object or correlate by any third medium; directly related; independent of any intermediate agency or action; having a close relation;" and Webster defines it, viz.: "Not separated, in respect to place, by anything intervening; proximate, close; as immediate contact." Danielson v. Wilson, 73 Ill. App. 298, 299.

"Though in strictness it excludes all mean times, it shall be construed such convenient time as is reasonably requisite for doing the thing." 2 Lev. 77.

It is stronger than the phrase "within a reasonable time," and implies prompt, vigorous action, without any delay. L. R. 4 Q. B. 469.

That which is produced directly by the act to which it is ascribed, without the intervention or agency of any distinct, intermediate cause. Fitch v. Bates, 11 Barb. (N. Y.) 473.

By immediate danger the law means such as is then and there about to be inflicted. Bailey v. Com., 11 Bush. (Ky.) 690.

IMMEDIATE DESCENTS.

Descents have long been distinguished as mediate and immediate, but these terms are susceptible of different interpretations, whence some confusion has been introduced into their legal discussion, since different judges have used them in different senses. In immediate descents there can be no impediment but what ariseth in the parties themselves, but in mediate descents, it is agreed, the disability of being an alien or attainted, in him that is the medius antecessor, will disable the other, though he have no such disability. Where the question is whether the inheritance by a brother from his brother, the father being an alien, is mediate or immediate, it is held after much discussion that the inheritance is immediate, so as not to be affected by the alienage of the father. It is held that in tracing the line of inheritance between brothers or their descendants it is not necessary to name the father as their common ancestor, and that alienism in any ancestor whom it was not necessary to name in tracing such inheritance or descent does not have the effect to impede it. Beavan v. West, 155 Ill. 604.

IMMEDIATE FAMILY.

See Family.

IMMEDIATE NOTICE.

The words "immediate notice" are not to be taken literally, but they mean that notice is to be given with due diligence under the circumstances of the case, and without unnecessary and unreasonable delay. Niagara Fire Ins. Co. v. Scammon, 100 Ill. 648.

Immediate notice means notice within

a reasonable time, and whether such notice was given is a question for the jury. 4 Joyce on Ins., sec. 3292; Ins. Co. v. Lewis et al., 18 Ill. 553; Ins. Co. v. Gould et al., 80 Ill. 388; People's Acc't Ass'n v. Smith, 126 Penn. St. 317; Fidelity & Casualty Co. v. Weise, 80 Ill. App. 506, 507.

"The construction of the policy [requiring immediate notice to be given of any accident] adopted at the trial was that to comply with the requirements the plaintiff was bound to exercise ordinary diligence and care in adopting such measures as would lead to knowledge upon his part of the occurrence of accidents, and of claims for damages, by proper instructions to his employees, and otherwise, and that he must give immediate notice, upon his earliest receipt of knowledge of an accident, or of information that a claim for damages was made, and that, if he did not know of the accident when it happened, he would not be required to give notice of its occurrence until immediately after he received information of it. This is a reasonable construction, having regard to the situation of the parties and the nature of the contract." Mandell v. Fidelity & Casualty Co., 170 Mass. 173.

IMMEDIATE PARTIES.

The expression "immediate parties," as used in the rule that a sale under a trust deed by an attorney or agent of the trustee in the absence of the trustee is voidable, as between the "immediate parties," means the owner of the equity of redemption, of the mortgage security and the purchaser at the sale, and includes the assignee of a certificate of sale under a judgment obtained against the mortgagor and levied against the equity of redemption. Grover v. Hale, 107 Ill. 642.

IMMEDIATE POSSESSION.

In an agreement for a lease, the words "immediate possession, if required" do not fix the commencement of the term; and if it be not otherwise fixed there is no contract. Rock Portland Cement Co. v. Wilson, 52 L. J. Ch. 214.

IMMEDIATE REAL EVIDENCE.

Evidence where the thing which is the source of the evidence is present to the senses of the tribunal. Springer v. Chicago, 135 Ill. 561.

IMMEDIATELY.

See also Forthwith.

Worcester defines "immediately" first, without the intervention of any other cause or event—opposed to "mediately"; second, instantly, directly, without delay, forthwith, just now. "Immediately" implies without any interposition of other occupation; instantly, or instantaneously, in an instant, or without any intervention of time; directly, without any division of attention.

The adjective "immediate" is defined as having nothing intervening either as to place, time or action; it is direct, proximate. Streeter v. Streeter, 43 Ill. 165.

According to standard lexicographers and the common understanding, the word has but two meanings-one indicating the relation of cause and effect as direct and proximate, and the other the absence of time between two events. Thus Webster defines it generally as "in an immediate manner." His third definition of "immediate" is "acting with nothing interposed or between, or without the intervention of another object as a cause, means, medium or condition; producing its effect by direct agency." And hence more specifically defines the adverb as "without intervention of anything, proximately, directly - opposed to mediately," which is in substance identical with the idea conveyed by the adverbial phrase quoted. For a cause which produces its effect "independent of all other causes" produces it by direct agency or proximately. But it has another, quite as commonly understood and used, which Webster states as "without interval of time; without delay; instantly." tion is called to cases in which the term has been construed to mean within a reasonable or practicable time. From the Am. & Eng. Ency. of Law, Vol. IX, p. 931 (note 2), is cited the remark that "the

word 'immediately,' although in strictness it excludes all mean times, yet to make good the deeds and intents of parties it shall be construed such convenient time as is reasonably required for doing the thing." These are believed to be cases in which something is to be done by voluntary human agency, and instant compliance is necessarily impossible, or so impracticable as to forbid the supposition that it was intended as illustrated by the provision in fire insurance policies requiring the insured to give immediate notice of his loss and the like, where some interval of time is necessary to prepare it. Preferred Masonic Mut. Acc. Ass'n v. Jones, 60 Ill. App. 108, 109.

It appears to have been held that the word "immediately" as used in policies is to be construed in this connection as a word of time, and does not mean within a reasonable time, but "presently," without any substantial interval." Genna v. Continental Casualty Co., 167 Ill. App. 416.

"The word 'immediately,' although in strictness it excludes all mean times, yet to make good the deeds and intents of parties it shall be construed such convenient time as is reasonably requisite for doing the thing' (Pybus v. Mitford, 2 Lev. 77). "The court cannot say it absolutely excludes all mesne acts" (R. v. Francis, Ca. temp. Hardwick, 115); but "immediately" implies that the act to be done should be done with all convenient speed. Per Rolfe, B., Thompson v. Gibson, 10 L. J. Ex. 243, 8 M. & W. 281.

Thus as regards a judge's certificate which any particular statute says shall be given "immediately," that "does not mean ten minutes, or a quarter or half an hour; but such a lapse of time as excludes the possibility of other business intervening to alter the impression made on the judge's mind." Per Abinger, C. B., Ib. See as to granting judge's certificates "immediately," under the various statutes. Thompson v. Gibson, sup.; Gillett v. Green, 10 L. J. Ex. 124, 7 M. & W. 347; Spain v. Cadell, 10 L. J. Ex. 313, 8 M. & W. 131; Page v. Pearce, 10 L. J. Ex. 434, 8 M. & W. 677; Shuttleworth v.

Cocker, 10 L. J. C. P. 1; 2 Sc. N. S. 47; Nelmes v. Hedges, 2 Dowl. N. S. 350; Grace v. Clinch, 12 L. J. Q. B. 273; 4 Q. B. 606; Jones v. Williams, 14 L. J. Ex. 76, 13 M. & W. 420; Forsdike v. Stone, 37 L. J. C. P. 301, L. R. 3 C. P. 607; Christie v. Richardson, 12 L. J. Ex. 86, 10 M. & W. 688; Skipper v. Skipper, 29 L. J. P. M. & A. 133.

So where a statute requires anything to be done "immediately," that is the same thing as "forthwith"; and implies "speedy and prompt action and an omission of all delay; in other words, that the thing to be done should be done as quickly as is reasonably possible." Per Cockburn, C. J., R. v. Berkshire Jus., 48 L. J. M. C. 137; 4 Q. B. D. 469; Va. R. v. Aston, 19 L. J. M. C. 236, 1 L. M. & P. 491. So where on an appeal to quarter sessions recognizances are required to be entered into "immediately" after notice of appeal, that raises a question of fact which the sessions are to determine having regard to all the circumstances of each case; and if they, fairly exercising their judgment, say that a lapse of a week is not too long (Re Blues. 5 E. & B. 291), or that one of four days is too long, their determination is final. R. v. Berkshire Jus., sup.

"May be immediately apprehended without a warrant and forthwith taken" before a justice, s. 103, 24 & 25 V. c. 96; whether this power is properly exercised, is a question for the jury, who should give effect to "immediately" and "forthwith" according to the principle just stated. Griffith v. Taylor, Thatcher v. Taylor, 46 L. J. C. P. 152, 2 C. P. D. 194. Similarly where a power to seize goods is given by a bill of sale if the grantor does not "immediately" upon demand make a prescribed payment, that means

make a prescribed payment, that means that the payment is to be made within a reasonably quick and prompt time after the demand, of which the jury are to judge having regard to the circumstances of the time and place of making the demand, including time to enquire into the authority of the person making the demand if it be not made by the creditor himself. Toms v. Wilson, 32 L. J. Q. B. 33, 382, 4 B. & S. 455, 11 W. R. 117, 7

L. T. 421; Brighty v. Norton, 32 L. J. Q.
B. 38, 11 W. R. 167; Massey v. Sladen,
38 L. J. Ex. 34, L. R. 4 Ex. 13.

A similar rule would apply where a person is to perform an act "immediately" after an award. 18 E. 4, 22, cited Butler & Baker's Case, 3 Rep. 28 b, 34.

IMMEDIATELY ADJACENT.

Contiguous; touching upon the whole of one side. Tudor v. Chicago, etc., R. Co., (III.) 27 N. E. 915.

IMMUNITIES.

Rights of exemption only—freedom from what otherwise would be a duty or burden. Lonas v. The State, 3 Heisk. (Tenn.) 306.

IMMUNITY OR PRIVILEGE.

An exemption from taxation is within the meaning of the expression "immunity or privilege." People v. Illinois C. R. Co., 273 Ill. 233.

IMPAIRING THE OBLIGATION OF A CONTRACT.

Any law, which enlarges, abridges, or in any manner changes the intention of the parties to the contract when it is discovered, necessarily impairs the contract itself, which is but the evidence of that intention. Ogden v. Saunders, 11 Wheaton (U. S.) 256.

Any law impairs the obligation which renders the contract in itself less valuable or less enforcible, whether by changing its terms and stipulations, its legal qualities and conditions, or by regulating the remedy for its enforcement. Rutland v. Copes, 15 Rich. (S. C.) 105.

Whether the statute operates to debt or the remedy, the result is the same. Cocke v. Hoffman, 5 Lea (Tenn.) 112.

IMPARTIAL JURY.

In the legal and constitutional history of England the term "impartial jury" has received a fixed and definite meaning, and

the term having been borrowed from the common law as it had existed there for ages, it must be deemed to have been adopted in view of the recognized and well understood meaning which had thus been fixed upon it. Eason v. The State, 6 Baxter 466. The Constitution must be construed as guaranteeing to every defendant in a criminal prosecution a trial by an "impartial jury," as that term was understood at common law.

It was a cardinal rule of the common law that juries, to be impartial, should stand indifferent between the parties. The rule is laid down by Lord Coke, that he that is of the jury must be liber homo, that is, not only a freeman and not bound, but also one that hath such freedom of mind that "he stands indifferent as he stands unsworn." Coke Litt., 155a, note "It is essential that every juryman should be wholly free, even from the suspicion of bias, and be omni exceptione majores." Dauncey v. Berkeley, cited in 3 Chit. Gen. Prac., 795. As said in Hesketh v. Braddock, 3 Burr. 1847: "The law has so watchful an eye to the pure and unbiased administration of justice, that it will never trust to the passions of mankind in the decision of any matter of right."

The first case in which the competency of a juror who had formed an opinion was considered was Noble v. The People, Breese, 54. The report of that case shows merely that the court, in holding him not disqualified, said: "The law and Constitution provide: that all men shall be tried by an impartial jury; but, as the mind of man is organized, it is almost impossible for a jury to be perfectly impar-Slight impressions will appear on the mind of any person who will at all think of any subject. This is unavoidable. These impressions will go on step by step on the mind, until they are confirmed into complete opinions. Yet the law can not draw any distinctions between the most hasty impressions and a confirmed opinion; therefore all these grades of opinion must be treated alike, and ought not to disqualify the person from acting on the jury. It is quite a different thing when these opinions are

expressed. Every person wishes to appear to the world consistent; therefore there is a strong partiality for those opinions when expressed, so much so, that it disqualifies a person so situated from acting on a jury." Coughlin v. The People, 144 Ill. 163, 164, 167.

An "impartial jury," within the meaning of the sixth amendment to the Constitution of the United States and of section 9 of article 8 of the Constitution of 1818, means a jury that shall be as free from impressions unfavorable to the parties' rights, as from malice or ill will towards his person. Scates, J., dissenting opinion. Smith v. Eames, 4 Ill. 82.

IMPEACHED.

Where a witness is contradicted in a material matter, or evidence is offered showing that he has made statements at another time inconsistent with his testimony as to a material matter, he is not thereby "impeached," according to the more restricted signification of the word. unless the jury believe from the contradiction, or from the proof of inconsistent statements made at another time, that he has wilfully sworn falsely as to the material matter in reference to which he has been contradicted or in reference to which he has made inconsistent statements at another time. Chicago C. Ry. Co. v. Ryan, 225 Ill. 290.

The term "impeached," as applied to the credibility of a witness, means more than a mere conflict of testimony, going not only to what the witness has testified to, but to the credibility of the witness. Beedle v. People, 204 Ill. 201; Baker v. Robinson, 49 Ill. 299.

The word "impeached," in relation to the credibility of a witness, is frequently used as synonymous with "attempted to impeach." Chicago C. Ry. Co. v. Ryan, 225 Ill. 289.

IMPEACHING EVIDENCE.

Mere conflict of testimony is not what is called "impeaching evidence," as applied to the credibility of a witness. Beedle v. People, 204 Ill. 201; Baker v. Robinson, 49 Ill. 299.

IMPENDING.

A legal proceeding is "impending" when a recourse to it is pressingly necessary in order to ascertain a right or a status. Grimston v. Turner, 18 W. R. 724.

IMPERCEPTIBLE ACCRETION.

The word "imperceptible" as connected with the words "slow and gradual" must be understood as expressive only of the manner of the accretion, as the other words undoubtedly are, and as meaning imperceptible in its progress, not imperceptible after a long lapse of time. Atty. Gen. v. Chambers, 4 DeG. & J. 71.

IMPLEADED.

The word "impleaded" is not synonymous with the expression "et al.," but when used in formal pleadings and in court records the word "impleaded" is properly used following the name of a defendant when there is more than one defendant and only one defendant appears, to designate that there are defendants other than the defendant who is then present in court. In Abbott's Law Dictionary the use of the word "impleaded" is thus explained: "Impleaded: to sue or prosecute in course of law. In actions where there are more defendants than one and one answers, his name is sometimes stated thus in the title of his answer or plea: 'Richard Roe, impleaded with John Doe,' signifying that the two are sued together but one only interposed the plea." And in Anderson's Dictionary of Law the use of the word "implead" is thus explained: "Implead: to sue in due course of law, as, A impleaded with B," and it is then stated by the author, where a party is designated as impleaded with another "each defendant may then interpose his own answer." The People v. Tierney, 250 III. 518, 519.

IMPLEMENTS.

The piano of a music teacher is an implement used in her profession or busi-

ness within the meaning of the statute. Amend v. Murphy, 69 Ill. 341.

Things necessary in any trade or mystery, without which the work cannot be performed; also the furniture of a house, as all household goods, implements, etc. Coolidge v. Choate, 11 Met. (Mass.) 82.

IMPLEMENTS OF HOUSE-BREAKING.

Common door-keys, or a pair of pincers, may be such implements within s. 58, 24 & 25 V. c. 96. R. v. Oldham, 21 L. J. M. C. 134, 2 Den. 472.

IMPLIED ASSUMPSIT.

At common law an implied assumpsit was an undertaking presumed, in law, to have been made by a party from his conduct, although he has not made any express promise. Highway Commissioners v. Bloomington, 253 Ill. 172.

Implied assumpsit is an undertaking presumed in law to have been made by a party from his conduct, though he has not made an express promise. The law always implies a promise or contract to do that which a party is legally bound to perform, and where by law a duty is imposed a promise will be implied. Willenborg v. I. C. R. R. Co., 11 Ill. App. 302.

IMPLIED CONTRACT.

A contract which arises under circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intention to contract. Chudnovski v. Eckels, 232 Ill. 317.

Bouvier defines implied contracts as being such as reason and justice dictate and which the law presumes that every man undertakes to perform. Hewes v. Village of Crete, 175 Ill. 348; Forbes v. Williams, 15 Ill. App. 308.

Implied promises are divided into promises implied in fact and promises implied in law. Contracts based upon promises implied in fact arise upon circumstances being proven which, according to the ordinary course of dealing and the

common understanding of men, show what is in law regarded as sufficient for a mutual intent to contract—that is, circumstances from which the intent to contract can be inferred. The law in such case presumes or implies a promise in fact from the acts and conduct of the party. Contracts based upon promises implied in law are a legal fiction adopted for the purpose of enforcing legal duties by actions ex contractu when no contract, either express or implied, in fact exists. In the case of a contract implied in law no evidence of an express promise or of and facts circumstances-conduct-, from which an intent to promise may be inferred, is necessary, for such contract does not rest on evidence of any promise. It can, however, never exist except where there is shown a plain duty and a consideration, which consideration may consist in a parting with something by the party seeking to enforce such implied contract. Intention is not sought for or regarded. The ordinary privity of contract is here unnecessary as the privity is regarded as existing through the relative duty or obligation. The necessary promise is conclusively presumed in order that there may not be a failure of justice. In this class of assumptual obligations the duty defines and limits the contract, while in the classes of express contracts and contracts implied in fact the contract defines and limits the duty. City of Chicago v. P., C., C. & St. L. R. R. Co., 146 Ill. App. 410, 411.

The term "implied contract" is a familiar one in the law. By reason of the relation of the parties or the existence of an obligation or duty a contract may be implied by law which the party never actually intended to enter into and the obligation of which he did actually intend never to assume. Whether or not it accords with scientific terminology to call an obligation imposed by the existence of a duty an implied contract, yet in the ordinary use of language by courts and writers it has been almost universally so called. "Implied contracts," says Blackstone, "are such as reason and justice dictate, and which, therefore, the law presumes that every man has contracted to

perform, and upon this presumption makes him answerable to such persons as suffer by his non-performance." 3 Com. 158.

The distinction between contracts implied by law from the existence of a plain legal obligation, without regard to the intention of the parties or even contrary thereto, and contracts implied in fact from acts or circumstances indicating their mutual intention, is unimportant. All alike come within the natural and usual meaning of the words "implied con-"In that large class of transactract." tions designated in the law as implied contracts, the assent or convention which is an essential ingredient of an actual contract is often wanting. Thus, if a party obtain the money of another by mistake it is his duty to refund it, not from any agreement on his part, but from the general obligation to do justice which rests upon all persons. In such case the party makes no promise on the subject, but the law, 'consulting the interests of morality,' implies one, and the liability thus arising is said to be a liability upon an implied contract. Argenti v. San Francisco, 16 Cal. 282; Maine on Ancient Law. 344." Pacific Mail Steamship Co., Joliffe, 2 Wall. 450; Chudnovski v. Eckels, 232 Ill. 317, 319.

The term "implied contract" has been used to denote not only contracts implied in fact,-that is, obligations where the mutual intention to contract, although not expressed, is implied or presumed from the acts of the parties or from surrounding circumstances,-but also to denote that class of obligations imposed or created by law without the assent of the party bound, and sometimes even notwithstanding his actual dissent, upon the ground that they are dictated by reason and justice. These latter obligations have sometimes been called constructive contracts or contracts implied by law,fictions of law adopted to enforce legal duties. Kenner on Quasi-contracts, p. 5; Bishop on Contracts, sec. 205; Hertzog v. Hertzog, 29 Pa. St. 465; 9 Cyc. 242; 7 Am. & Eng. Ency. of Law,-2d ed.,-91; 15 Am. & Eng. Ency. of Law,-2d ed.,-1078; Lillard v. Wilson, 178 Mo. 145;

Railway Co. v. Gaffney, 65 Ohio St. 104; 3 Blackstone 160; Bowen v. Hoxie, 137 Mass. 527; Bishop on Contracts, sec. 205; Harty Bros. v. Polakow, 237 Ill. 564, 565; Brown v. Gerson, 182 Ill. App. 189.

A contract which is inferred or raised by implication of law from facts and circumstances, is an "implied" and not an "express" contract. Express contracts are those in which the terms of the contract or agreement are openly and fully uttered and avowed at the time of making, while an implied contract, in fact, arises where there is not an express contract, but there is circumstantial evidence showing that the parties did intend to make a contract. Bouv. L. D.; Turner v. Owen, 122 Ill. App. 504.

A familiar illustration of an implied contract is, where one person, in the absence of any express agreement, renders valuable services to another which are knowingly accepted by such other, the law will imply a promise to pay a fair and reasonable compensation for such services. McFarlane v. Dawson, 125 Ala. 428. If an attorney renders services without any express agreement as to the amount of compensation to be received, the law implies a promise to pay him reasonable compensation for the work done. Miller v. Tracey, 86 Wis. 330. These illustrations are examples of genuine implied contracts, in all of which there is some act or line of conduct as to basis for the implication and which furnishes the necessary privity to support the action of general assumpsit. This class of implied contracts is sometimes called contracts implied as of fact. Citing Page on Contracts, sec. 771. Highway Comrs. v. Bloomington, 253 Ill. 172, 173.

IMPLIED COVENANTS.

As applied to written contracts, implied covenants are such terms as are reasonably inferable from a consideration of the entire instrument, and when a covenant is thus discovered it is as much a part of the contract as if expressly set forth therein. Grimley v. Davidson, 133 Ill. 116. No implied covenant can be invoked contrary to the clearly expressed inten-

tion of the parties. The whole doctrine of implied covenants rests on the fundamental rule of construction that the intention of the parties as the same has been expressed by them in the written instrument must be given effect. C. & W. I. R. R. Co. v. C. & E. I. R. R. Co., 260 Ill. 258, 259.

IMPLIED INVITATION.

When a person is upon premises by implied invitation, it means he is there for a purpose connected with the business in which the owner of the premises is engaged or which he permits to be carried on. Plummer v. Dill, 156 Mass. 426; Purtell v. Philadelphia Coal Co., 256 Ill. 114.

In Pauckner v. Wakem, 231 Ill. 276, the court distinguishes between a mere licensee and "one who comes on the premises of another by invitation express or implied," and says, "An implied invitation means more than a mere license—means that the visitor was there for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on." Ib. 281; Craney v. Schloeman, 145 Ill. App. 315.

Unguarded premises supplied with dangerous attractions are regarded as holding out implied invitations to children, for they being without judgment and likely to be drawn by childish curiosity into places of danger, are not to be classed with trespassers, idlers and mere licensees. In such case the owner should reasonably anticipate the injury which has happened. Northwestern E. R. Co. v. O'Malley, 107 Ill. App. 605.

IMPLIED MALICE.

Malice is implied when no considerable provocation appears, or where all the circumstances of the killing show an abandoned and malignant heart. Kota v. People, 136 Ill. 657. See also Peri v. People, 65 Ill. 17.

Malice is implied where one wilfully poisons another, the law presuming malice in such a deliberate act, although no particular enmity can be proved. Davison v. People, 90 Ill. 229.

IMPLIED POWER.

See also Incidental Powers.

. By an implied power is meant one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has slight or remote relation to it. People v. Chicago Gas Trust Co., 130 Ill. 268; People v. Pullman Car Co., 175 Ill. 125; Fritze v. Equitable B. & L. Society, 186 Ill. 196; Calumet, etc., Co. v. Conkling, 273 Ill. 323; Alexander v. Bankers' Union of Chicago, 187 Ill. App. 477; United States Brewing Co. v. Dolese & Shepard Co., 174 Ill. App. 398. See also Illinois Conference Female College v. Cooper, 25 Ill. 133; Caldwell v. City of Alton, 33 Ill. 416; Chicago, Pekin and Southwestern Railroad Co. v. Town of Marseilles, 84 Ill. 643; Chicago Gas Light Co. v. People's Gas Light Co., 121 Ill. 530; Mott v. Danville Seminary, 129 Ill. 403; North Side Railroad Co. v. Worthington (Tex.), 30 S. W. Rep. 1055; The People v. Pullman Car Co., 175 Ill. 137.

Powers which exist only to enable a corporation to carry out the express powers granted,—that is, to accomplish the purpose of its existence. First, etc., Church v. Dixon, 178 Ill. 270.

Implied power cannot be invoked to authorize a corporation to engage in collateral enterprises but remotely connected with the specific purposes it was created to accomplish. A power which a corporation may exercise by implication must be bounded by the purposes of the corporate existence and the terms and intention of the charter, and acts which tend only remotely and by indirection to promote its interest and chartered objects can not be justified by implication of law, but are ultra vires. The People v. Pullman Car Co., 175 Ill. 151.

Corporations can exercise only such powers as may be conferred by the legislative bodies creating them, either by express terms or by necessary implication. Implied powers are presumed to exist in order to enable such bodies to carry out the express powers granted and to accomplish the purpose of their creation. People v. Chicago Gas Trust Co., 130 Ill. 268; People v. Pullman Car Co., 175 Ill. 125;

United States Brewing Co. v. Dolese & Shepard Co., 174 Ill. App. 398; Alexander v. Bankers' Union of Chicago, 187 Ill. App. 477.

An implied power of a municipal corporation is a power necessarily incident to the exercise of those powers expressly granted and directly and immediately appropriate to their exercise. People ex rel. v. Chicago Gas Trust Co., 130 Ill. 268; Chicago and Northwestern Railway Co. v. City of Chicago, 148 Ill. 141; Mather v. City of Ottawa, 114 Ill. 659; Gundling v. City of Chicago, 176 Ill. 347.

IMPLIED TENANCY.

The doctrine of implied tenancies from year to year, upon a holding over, is distinctly recognized in this State. Hunt v. Morton, 18 Ill. 75; Prickett v. Ritter, 16 Ill. 96; Clinton Wire Cloth Co. v. Gardner, 99 Ill. 160.

IMPLIED TRUST.

See Trusts.

IMPORTATION.

To constitute an importation so as to attach the right to duties, it is necessary not only that there should be an arrival within the limits of the United States, and of a collection district, but also within the limits of some port of entry. Arnold v. United States, 9 Cranch (U. S.) 120.

IMPORTED.

The 48 G. 3, c. civ. s. 33, imposed a duty on all goods "imported into or exported from Berwick Harbour." The harbour extended from Berwick Bridge down the Tweed to the sea, but not above the bridge. Goods were brought up the river in a sea-going vessel, which, having first used the harbour commissioners' rings and posts in order to moor the vessel while lowering the masts, passed through Berwick Bridge and unloaded her cargo about 200 yards above the bridge and beyond the limits of the harbour—held, that these goods were not

"imported into" the harbour, and as such liable to duty. Wilson v. Robertson, 24 L. J. Q. B. 185, 4 E. & B. 923.

IMPORTS.

In dealing with the power of the States to tax imported goods while in the original packages and in the possession of the importer, it must be born in mind that the clause of section 10 of article 1 of the Federal constitution, which provides, in part, that "no State shall, without the consent of the Congress, lay any imposts or duties on imports or exports," creates a distinction between goods imported from foreign countries and those brought in from other States of our Union. The word "imports," in this section of the Federal constitution, applies only to articles imported from foreign countries and is an absolute prohibition of State taxation. A different rule, however, obtains with respect to articles transported from one State to another. In such cases there is no positive prohibition like that against the taxation of imports from foreign countries, and the States have power to tax goods that are brought into this State from other States if they are held for sale here or for other purpose, giving to the property a situs within this State. The People v. Bacon, 243 Ill. 319.

The word import, in a commercial sense, means the goods or other articles brought into this country from abroad—from another country. License Cases, 5 Howard (U. S.) 945.

The term imports means not only the "act of importation," but the "articles imported." Wynne v. Wright, 1 Dev. & Bat. (N. C.) 23.

IMPOSE.

"The constitution, in speaking of ordinary taxation and taxes, uses the words 'levy,' 'assess' and 'rate.' In the only place in the article where license tax is mentioned, the word is 'impose.' The former words were apt in speaking of taxes, and the latter is inappropriate in describing licenses." State v. Camp Sing, 18 Mont. 144.

IMPOSED.

As used in a covenant to pay rates, etc., "imposed" means imposed by compulsion; and, therefore, where a lessor covenanted to pay the rates, taxes, and impositions which might be "imposed" on the demised premises, it was held that he was not liable to the water rate. Badcock v. Hunt, 58 L. J. Q. B. 134, 22 Q. B. D. 145.

IMPOSSIBLE CONTRACT.

"An agreement may be impossible of performance at the time when it is made, and this is in various ways. It may be impossible in itself; that is, the agreement itself may involve a contradiction, as if it contains promises inconsistent with one another or with the date of the agreement. Or the thing contracted for may be contrary to the course of nature, 'quod natura fieri non concedit.' * * * It may be impossible by law, as being inconsistent with some legal principle or institution. * '* * It may be impossible in fact by reason of the existence of a particular state of things which makes the performance of the particular contract impossible." Pollock Princ. Cont. 380.

"Moreover the performance of a contract which was possible in its inception may become impossible in either the second or third of these ways. The authorities are in a somewhat fluctuating condition, and perhaps not wholly consistent. But the strong and concurrent tendency of the later cases is to avoid laying down absolute rules, and to give effect as far as possible to the real intention of the parties-in other words, to treat the subject as one to be governed by rules of construction rather than by rules of law. And by this means they have done much to clear up and simplify the matter for practical purposes, though a formally accurate statement of the law may be difficult to extract from them." Princ. Cont. 381.

"An agreement is void if the performance of it is either impossible in itself or impossible by law. When the performance of an agreement becomes impossible

by law, the agreement becomes void." Pollock Princ. Cont. 381.

"On the first and simplest rule—that an agreement impossible in itself is void -there is little or no direct authority, for the plain reason that such agreements do not occur in practice; but it is always assumed to be so. Perhaps even this rule is not accurately stated as an absolute one. It may be put on the ground that the impossible nature of the promise shows that there was no real intention of contracting and therefore no real agreement. It would thus be reduced to a rule of construction or presumption only, though a strong one." Princ. Cont. 382. See Brett, J., in Clifford v. Watts, (1870) L. R. 5 C. P., p. **558.**

"The question is," it seems, "not whether a thing is absolutely impossible (a question not always without difficulty), but whether it is such that reasonable men in the position of the parties must treat it as impossible." Pollock Princ. Cont. 383, citing Thornborow v. Whitacre, (1706) 2 Ld. Raym. 1164.

But "a thing is not to be deemed impossible merely because it has never yet been done, or is not known to be possible. 'Cases may be conceived,' says Willes, J., in the case last cited, 'in which a man may undertake to do that which turns out to be impossible and yet he may still be bound by his agreement.'" Pollock Princ. Cont. 883.

This, however, "must be limited to cases where it may be within the serious contemplation of a reasonable man at the time that the thing may somehow be done. * * If a man may bind himself to do something which is only not known to be impossible, much more can he bind himself to do something which is known to be possible, however expensive and troublesome." Pollock Princ. Cont. 384.

"Difficulty, inconvenience, or impracticability arising out of circumstances merely relative to the promisor will not excuse him. 'Impossibility may consist either in the nature of the action in itself, or in the particular circumstances of the promisor. It is only the first or ob-

jective kind of impossibility that is recognized as such by law. The second or subjective kind, cannot be relied on by the promisor for any purpose, and does not release him from the ordinary consequences of a wilful non-performance of his contract.'" Pollock Princ. Cont. 386, citing Savigny, Obl. 1, 384; Ro. Ab. 1, 452, L. pl. 6; Shepp. Touchst. 392; Lamb's Ca. 5 Co. Rep. 23 b; Lloyd v. Crispe (1813) 5 Taunt. 249, 14 R. R. 744; Stray v. Russell (1859) Q. B. & Ex. Ch. 1 E. & E. 888, 916, 28 L. J. Q. B. 279, 29 L. J. Q. B. 115.

"Where an agreement is impossible by law there is no doubt that it is void: for example, a promise by a servant to discharge a debt due to his master is void, and therefore no consideration for a reciprocal promise." Pollock Princ. Cont. 387, citing Harvey v. Gibbons, (1674) 2 Lev. 161.

"And when the performance of a contract becomes wholly or in part impossible by law, the contract is to that extent discharged." Pollock Princ. Cont. 387, citing Baily v. De Crespigny, (1869) L. R. 4 Q. B. 180, 38 L. J. Q. B. 98.

"If the performance of any promise becomes impossible in fact by the default of the promisee, the promisor is discharged, and the promisee is liable to him under the contract for any loss thereby resulting to him." Pollock Princ. Cont. 382, citing Roberts v. Bury, (1869) A. R. 4 C. P. 755 in Ex. Ch. 5 C. P. 310, 39 L. J. C. P. 129.

"If it becomes impossible by the default of the promisor, the promisor is liable under the contract for the non-performance." Pollock Princ. Cont. 382, citing 1 Ro. Ab. 448, B., citing 21 E. IV. 54, pl. 26 per Choke, J.; Bigland v. Skelton, (1810) 12 East 436.

IMPOST.

An impost, or duty on imposts, is a custom or a tax levied on articles brought into a country. Brown v. Maryland, 12 Wheaton (U. S.) 437.

Impost is a duty on imported goods and merchandise. In a larger sense it is any tax or imposition. Pacific Ins. Co. v. Soule, 7 Wallace (U. S.) 445.

IMPOTENT.

The definition of "impotent" as given in the Universal Dictionary of the English Language, is "deficient, incapacity, weak, feeble, one who is feeble, infirm or languishing from disease, or destitute of power of sexual intercourse." Impotency, as classed in Bouvier's Law Dict., may be "curable, incurable, accidental or temporary." Loftus v. Illinois Midland Coal Co., 181 Ill. App. 202.

The words "naturally impotent" mean to be impotent or incapable in the matter of performing coition with the other sex as nature prompts, and incurably so. The origin of the impotency is unimportant. It is equally a ground of nullity whether it existed at birth or came afterwards from the party's own fault, or from the fault of another, or from an accident for which no one is responsible. McNeil's Ill. Evidence 448.

IMPOTENCY.

Such an incurable incapacity that the party can neither copulate nor procreate. Jorden v. Jorden, 93 Ill. App. 636.

Impotence has been defined to be "such an incurable incapacity as admits of neither copulation nor procreation." Bishop on Marriage and Divorce,—5th ed., sec. 332. To obtain a divorce upon the ground of impotency, it must be shown that the defect existed at the time of the marriage and that it is incurable; and the burden of proof is upon the complainant to establish these facts. 1 Bishop on Marriage and Divorce,-5th ed., sec. 322; Lorenz v. Lorenz, 93 Ill. 376. Where the defect in the husband proceeds from self-abuse, if he will not exercise a moral restraint over himself, and test the curability of his disorder by proper self-control, his wife has a right of action on the ground of his impotence. Griffeth v. Griffeth, 162 Ill. 371.

Impotency may be curable, incurable, accidental or temporary. Loftus v. Illinois, etc., Co., 181 Ill. App. 202.

IMPOUNDING.

"To constitute an impounding the cattle must be placed in a pound and

there restrained with the intent on the part of the person so restraining them, to impound them." Howard v. Bartlett, 70 Vt. 316.

IMPRISONED FOR DEBT.

Section 12 of article 2 of the Constitution of 1870 providing that "no person shall be imprisoned for debt" applies only to debts in their proper and popular sense, where the relation of debtor and creditor exists, and does not extend to actions for fines and penalties inflicted for violations of the penal laws of this State. People v. Zito, 237 Ill. 442.

IMPRISONMENT.

An imprisonment is any forcible detention of a man's person, or control over his movements. Lawsan v. Buzines, 3 Harr. (Del.) 418.

Words are sufficient to constitute an imprisonment, if they impose a restraint upon the person, and the plaintiff is accordingly restrained; for he is not obliged to incur the risk of personal violence and insult by resisting, until actual violence is used. Pike v. Hanson, 9 N. Hamp. 493.

IMPROPER.

"Improper" means "not fitted to the circumstances." Pennsylvania Sloan, 125 Ill. 80.

"'Improper' really means 'wrongful,' -that is otherwise than by inevitable accident." Per Brett, M. R., The Warkworth, 53 L. J. P. D. & A. 66.

IMPROPER NAVIGATION.

"'Improper navigation,' within the meaning of this deed [one between owners for their mutual indemnity], is something improperly done with the ship or part of the ship in the course of the voyage * * * an omission properly to navigate the ship" (per Willes, J., Good v. London Steamship Owners Assn., L. R. 6 C. P. 569); and accordingly it was there held that damage to cargo from

cock being negligently left open, was damage from "improper navigation."

"Improper navigation" within subs. 4, s. 54, Merchant Shipping Act Amendment Act, 1862 (25 & 26 V. c. 63), may result as well from structural defect in the vessel or from its gear being out of order, as from the negligence of those on board. The Warkworth, 53 L. P. D. & A. 4, 65, 9 P. D. 20, 145; Carmichael v. Liverpool Sailing-Ship Assn., 56 L. J. Q. B. 208, 428, 19 Q. B. D. 242, 57 L. T. 550, 35 W. R. 793, 3 Times Rep. 636.

But neither in a document inter partes, nor in the statute cited, does damage to cargo, caused by its being placed in a badly cleansed hold, arise from "improper navigation"; such damage arises rather from "improper stowage." Canada Shipping Co. v. British Shipowners Assn., 22 Q. B. D. 727, 58 L. J. Q. B. 462, 38 W. R. 87, 5 Times Rep. 700.

"Includes something wrongly done or omitted before the navigation commenced which has an effect on the ship's navigation while she is beng navigated, which affects her safe sailing as a ship with regard to the safety of the goods on board." Canada Shipping Co. v. British Shipowners', etc., Protection Assn., 22 Q. B. D. 727, citing Per Lord Esher, M. R., in Carmichael v. Liverpool, etc., Indemnity Assn., 19 Q. B. D. 242.

There is "improper navigation" where there is negligence on the part of the shipowner or his servants before the navigation of the ship begins which has the effect to cause the ship to be unsafely navigated during the navigation with regard to the safety of the goods. This is the case where the ship is sent to sea in such condition that she cannot be safely navigated with regard to the safety of the cargo and is thus in fact improperly navigated. Carmichael v. Liverpool, etc., Indemnity Assn., 19 Q. B. D. 242.

But otherwise where the ship is in a proper condition so far as regards her capacity for being sailed with safety to the goods, though in a condition, having nothing to do with her sailing qualities, such that the goods receive damage, as where the hold is dirty so that the goods water, caused by the bilge-cock and sea- | become dirty or tainted. Canada Shipping Co. v. British Shipowners', etc., Assn., 23 Q. B. D. 342.

"It seems to me impossible to say that because the ship smelt of creosote, she was improperly navigated. The ship was undoubtedly unfit to receive that particular cargo, but that unfitness had nothing whatever to do with the navigation of the ship." Lindley, L. J., in Canada Shipping Co. v. British Shipowners, etc., Assn., 23 Q. B. D. 344.

"I should have thought it clear that damage caused by improper navigation was equivalent to damage caused by navigation of an improper kind, and consequently that damage, caused by something that was not navigation at all, was not caused by improper navigation." Bowen, L. J., in S. C.

IMPROPER STOWAGE.

"The term" applies "as well to the placing of the whole cargo in an unsuitable place as to the unskilful disposition of its parts." Canada Shipping Co. v. British Shipowners', etc., Protecting Assn., 22 Q. B. D. 727.

"The placing of goods upon the deck of a sea-going ship is improper stowage." Strang v. Scott, 14 App. Cas. 601.

"Loading coals amongst machinery is improper stowage." Per Lord Watson in Mackill v. Wright, 14 App. Cas. 106.

IMPROVEMENT.

The inclosure of land is an improvement of it, as would also be the erection of a house, being something done towards its enjoyment. Illinois C. Ry. Co. v. Wade, 46 Ill. 116.

The general rule of law as to improvements is, that improvements made upon real estate, of a fixed and permanent character, and attached to the realty, by one who has no title or interest in the premises, and without the consent of the owner of the fee, become a part of the realty, and vest in the owner of the fee. Mathes v. Dobschuetz, 72 Ill. 438; Dooley v. Crist, 25 Ill. 556. But courts of equity have not hesitated to soften the harshness and rigor of the rule of the law, when the circumstances of the case and

the relation of the parties required it to be done to meet the ends of justice.

The true rule is, that where improvements upon real estate, of a permanent character, are made in good faith by one in possession, believing himself to be a bona fide purchaser or owner for value, and under circumstances justifying such belief, and the expenditure is reasonable in amount and of benefit to the estate, allowance may, in a court of equity, be made therefor; but the person claiming such allowance will be charged with the value of the use and occupation of the premises. See McConnel v. Holobush, 11 Ill. 61; Breit v. Yeaton, 101 Ill. 242; Bradley v. Snyder, 14 Ill. 263; Miller v. Thomas, 14 Ill. 428; Gardner v. Diederichs, 41 Ill. 158; Kinney v. Knoebel, 51 Ill. 112; Roberts v. Fleming, 53 Ill. 196; Smith v. Knoebel, 82 Ill. 392; Worth v. Worth, 84 Ill. 442; Ebelmesser v. Ebelmesser, 99 Ill. 541. There is, however. no principle of law permitting the owner or mortgagor, or his grantee, or a subsequent purchaser with notice of prior equities of first purchaser, to make improvements on the premises and have a prior lien therefor, but such improvements will pass upon sale of the premises. Martin v. Beatty, 54 Ill. 100; Dart v. Hercules, 57 Ill. 446; Wood v. Whelen, 93 Ill. 153; Cable v. Ellis, 120 Ill. 152, 153.

In equity, where one makes improvements innocently, or through mistake, upon the land of another, he will not ordinarily be allowed to enforce a claim for reimbursement, as an actor; but when the true owner seeks relief in equity, as, for instance, to set aside a sale of the land on which the improvements have been made, or to obtain an accounting for rents and profits, he may be required to make compensation for the improvements upon the principle, that he who seeks equity must do equity. Ebelmesser v. Ebelmesser, 99 Ill. 541; 3 Pom. Eq. Jur., sec. 1241 and note. Even in such case, compensation will only be allowed for the increased value caused by the improvements. Ebelmesser v. Ebelmesser, supra. Courts of equity will not grant active relief, and sustain a bill to recover for such enhanced value, after the true owner has recovered the premises at law. 2 Jones on Liens, sec. 1136. In proceedings instituted by the real owner, it must appear, that the party making the improvements did so under a claim of title which turned out to be defective, or under some mistake concerning his rights, or because he was induced to incur the expenditures through the fraud or deception of the owner. 3 Pom. Eq. Jur., sec. 1241, note 1; Williams v. Vanderbilt, 145 Ill. 251, 252.

"The word 'improvement' may be said to comprehend everything that tends to add to the value or convenience of a building or a place of business, whether it be a store, manufacturing establishment, warehouse, or farming premises. It necessarily includes much more than the term 'fixtures.'" Parker v. Wulstein, 48 N. J. Eq. 96.

IMPROVIDENCE.

"Improvidence is defined to be: 'Want of care or foresight in the management of property.'" In re Connors, 110 Cal. 412, quoting 10 Am. & Eng. Ency. of Law, 321.

The improvidence which renders a man incompetent, signifies want of care and foresight in the management of whatever may be put under his control. Emerson v. Bowers, 14 Barb. (N. Y.) 660.

The term evidently refers to habits of mind and conduct which become part of the man, and render him generally, and under all ordinary circumstances, unfit for the trust or employment in question. Emerson v. Bowers, 14 Barb. (N. Y.) 454.

IMPUTED NEGLIGENCE.

"There can be no such thing as imputed negligence, except in those cases where such a relation exists as that of master and servant or of principal and agent. In order that the negligence of one person may be properly imputed to another, they must stand in such relation of privity that the maxim qui facit per alium facit per se directly applies. Union Pacific Railway Co. v. Lapsley, 2 U. S. Cir. Ct. of

App., 149; 7 Am. & Eng. Ency. of Law,-2d ed.,-p. 448, note 2; McKernan v. Detroit Citizens' Street Railway Co., 101 N. W. Rep. 812, and cases cited; Marden v. Portsmouth, K. & Y. Street Railway Co., 60 Atl. Rep. 530. Whatever may be the doctrine of some of the earlier cases in other jurisdictions, not only our own recent decisions, but the great weight of authority, is to the effect that where a person injured is without fault and has no authority over the driver of a private conveyance, the negligence of the latter cannot be imputed to the injured person so as to defeat the recovery against a third party for the concurring negligence of the driver and such third party." Nonn v. Chicago City Ry. Co., 232 Ill. 381, 382.

IMPUNITY.

Applies to something which may be done without penalty or punishment, and comes from the Latin word impunis, which is a derivative from the word poena, with the prefix in, and means without punishment or penalty. Dillon v. Rogers, 36 Tex. 153.

IN.

A Latin word meaning "not." Nicewander v. Nicewander, 151 Ill. 165.

"If one grant all his goods in such a place; by this grant nothing doth pass but the goods that are in such a place at the time of the grant, and not any other goods that shall be there afterwards." Touch. 98.

A legacy of the goods, or of certain classes of goods, "in" a house or other place, will comprise all the goods of the kind indicated the usual locality of which is in such house or other place, though they may at the time be actually somewhere else, if they have only been removed from their usual locality for a temporary purpose, e. g., at testator's banker's for safe custody (Re Johnson, 53 L. J. Ch. 645, 26 Ch. D. 538; Wms. Exs. 1333). But in Heseltine v. Heseltine (3 Madd. 276) it was held that a gift of "the chattels in my house at doctors' commons' did not pass the furniture in testator's house in Bedford Square, where he subsequently removed, though they were in his house at doctors' commons at the date of his will. Vf. Spencer v. Spencer, 21 Bea. 548.

A bequest of all testator's property "in" a particular country, county or other locality will include all the debts due to him from persons resident in such locality. Nisbet v. Murray, 5 Ves. 149; Tyrone v. Waterford, 29 L. J. Ch. 486, 1 D. G. F. & J. 613; Arnold v. Arnold, 4 L. J. Ch. 123, 2 M. & K. 365; Horsfield v. Ashton, 2 Jur. N. S. 193, 355; Guthrie v. Walrond, 52 L. J. Ch. 165, 22 Ch. D. 573.

As to what passes under a general description of property "in" or "at" a place. Rooke v. Kensington, 2 K. & J. 753, 25 L. J. Ch. 795; Early v. Rathbone, 57 L. J. Ch. 652, 58 L. T. 517: At.

In Humphreys v. Roberts (5 B. & Ald. 407), there was a devise of all testator's messuage or dwelling-house in High Street in the town of H., and all and every his buildings and hereditaments "in" the same street: the testator had only one house in High Street, but behind it he had two cottages fronting Bakehouse Lane; there was no thoroughfare through that lane, the only entrance into it being from the High Street: it was held that the two cottages passed under the Will, and Holroyd, J., said, "The only way to these cottages was through the High Street, and there was thoroughfare through Bakehouse Lane. If there had been an opening from the High Street to these cottages alone, they would clearly be 'in' the street, and I can see no difference from the circumstance of there being other houses in the court."

"In his Trade or Business" (s. 44 (iii), Bankruptcy Act, 1883), "means, not necessarily visibly in his trade or business, but acquired for the purposes of the business and used for those purposes." Per Lindley, L. J., Colonial Bank v. Whinney, 55 L. J. Ch. 591, 30 Ch. D. 261: see that case reversed by H. L. on another point, 56 L. J. Ch. 43, 11 App. Ca. 426, 55 L. T. 362, 34 W. R. 705. See also Re Jenkinson, 54 L. J. Q. B. 601, 15 Q. B. D. 441.

A contract for goods, to be paid for "in," or "within," a stated period, gives the buyer the right to call for delivery at any reasonable time within that period without tendering the price, which is only payable at the expiration of the period. Spartali v. Benecke, 19 L. J. C. P. 293, 10 C. B. 212.

IN A WANTON, WILFUL AND IN-SULTING MANNER.

A mortgagee cannot be said to take property "in a wanton, wilful and insulting manner," within the meaning of those words as used in an instruction as to punitive damages, although his act in seizing the property was unwarranted by the mortgage, where the mortgagor yielded to the unlawful demand, which was made without anger, or the use of threats or force, or the offering of insults, and although the mortgagee refused to deliver up the notes secured by the mortgage. Mansur, etc., Co. v. Smith, 65 Ill. App. 323.

IN ACCORDANCE WITH THE FORM.

Bills of sale as security for money, must be "in accordance with the form" prescribed in the Sch. to Bills of S. Act, 1882 (V. s. 9). In Re Barber, ex p. Stanford (55 L. J. Q. B. 344; 17 Q. B. D. 269; 54 L. T. 894; 34 W. R. 507), it was pointed out by Esher, M. R. and Cotton, Lindley, Bowen, and Lopes, L. JJ., that the words of that section did not say that a bill of sale was to be "in the form" prescribed, but "in accordance with the form;" and it was added, "the distinction can scarcely be accidental:" the phrase means "substantially in accordance with the form." Per Day, J., Consolidated Credit Corp. v. Gosney, 55 L. J. Q. B. 62; 16 Q. B. D. 24; 54 L. T. 21; 34 W. R. 106.

IN ACTUAL USE.

"It is manifest, that, by the words 'in actual use' [in a statute exempting from

duty wearing apparel in actual use], congress did not intend that those words should be limited to wearing apparel on the person at the time. They must have a more extended meaning." Astor v. Merritt, 111 U. S. 213.

IN AID.

Where a testator charged his general realty "in aid of my personal estate and in exoneration of my other personal estate, with the payment of all my just debts, funeral and testamentary expenses,"—it was held that this did not amount to a direction to pay a mortgage debt on realty specifically devised. Re Newmarch, 48 L. J. Ch. 28; 9 Ch. D. 12: Buckley v. Buckley, 19 L. R. Ir. 555.

IN ALL CASES.

See also Case.

"One is amazed, in casting a glance over our statute book, to find how often this form of expression [all] occurs, frequently signifying as here [in a statute providing that 'in all cases where a levy is made on property, which is claimed by a third person, and good and sufficient security is tendered, to leave the same in possession of such claimant], not absolutely all-but all, of a particular class, only Here it means, in all cases where the claimant is in possession of the property, he shall not be deprived of it, but it shall be left with him." Bivins v. Vinzants, Lessee, 15 Ga. 521.

"The language in all cases [in a feebill giving to a constable 'traveling expenses in all cases for each mile circular six cents'] is used in the sense of each case. If that construction be departed from there is no number of cases so large as to be excluded from the word 'all.' It would not be limited to time, place or parties. The fee-bill deals with services in each particular case." Mc-Gee v. Dillon, 103 Pa. St. 435.

"The defendant claims * * * that since the amendment of section 348 of the Code, in 1851, providing for an ap-

peal to the General Term from a judgment entered upon the direction of a single judge 'in all cases,' an appeal from a judgment entered by default [as here] may be taken. This provision has reference to cases tried and decided by single judges after hearing the parties, and where judgment has been directed after examining the issues of law or fact. The section must have some such limitation. A party certainly could not appeal from a judgment to which he had expressly assented, although entered under the direction of a single judge; and no more can he prove a judgment to which he has impliedly assented by his default." Flake v. Van Wagenen, 54 N. Y. 28.

IN ALL CASES RELATING TO THE REVENUE.

Section 88 of the Practice Act, giving an appeal to the Supreme Court instead of to the Appellate Court, "in all cases relating to the revenue," is intended to embrace public revenue, whether State or municipal, and all taxes and assessments imposed by public authority. Blake v. The People, 109 III. 525.

IN ALL OTHER CASES.

It is not the intention of the constitution to confer upon the Supreme Court jurisdiction, absolutely, "in all cases," but its intention is, that in all cases other than those in which that court is given original jurisdiction, its jurisdiction, whether derived immediately from the constitution itself or derived from an act of the legislature, and wholly regardless of the fact whether such judisdiction is in a few or many or all other cases, should be an appellate jurisdiction only. C. & A. R. R. Co. v. Fisher, 141 Ill. 621.

IN ANY ACTION.

Section 9 of chapter 51 of the Revised Statutes of Illinois was intended in actions at law to obviate the necessity for a bill of discovery. The order, provided for in that section, may be made "in any action pending before them" (the courts).

The words, "in any action pending before them," exclude the idea that the evidence sought to be obtained can only be acquired by a bill of discovery. "Any action" includes a suit at law, as well as a bill in chancery. The legal and equitable remedies may be concurrent, but the latter does not exclude the former. Swedish-Amer. Tel. Co. v. Casualty Co., 208 Ill. 576.

IN ANY ASSIGNMENT.

The expression "preferences in any assignment" used in the act of 1877 with relation to preferences by an insolvent debtor, means preferences written in an assignment, or created by such instrument or device, and under the circumstances, as authorize them to be read into the assignment, and treated as void, as being part thereof, and does not mean preferences generally. Farwell v. Nilsson, 133 Ill. 49.

IN ANY DEGREE.

The expression as used in an instruction that the carrier's duty to use the highest degree of care for the safety of passengers consistent with the practical operation of its railroad did not "in any degree" excuse passengers from observing ordinary care, means "in any way," or "in any manner," and does not instruct the jury that the passenger was bound to observe more than ordinary care. Harvey v. Chicago, etc., R. Co., 221 Ill. 245.

IN ANY FORM.

See In Any Way.

IN ANY WAY.

An application for life insurance in which insured agrees that the insurance shall not extend to "poison in any way taken," refers, by the expression "in any way," to the mode or manner in which the poison is taken, and not to the motive of the insured in taking it, so as to exclude from the risks insured against, the accidental taking of poison, as for example, the taking of chloral by mistake for distilled water. Metropolitan, etc., Ass'n

v. Froiland, 161 Ill. 37. See also Travelers' Ins. Co. v. Ayers, 217 Ill. 392, 393.

IN ANY WAY DISPOSE OF.

The words "nor in any way dispose of any of the liquors aforesaid," in an ordinance do not refer to a sale of the liquors only. The expression, "in any way dispose of" signifies more than to sell. Selling is but one mode of disposing of property. Phelps v. Harris, 101 U. S. 380; State v. Deusting, 33 Minn. 102; City of Jerseyville v. Becker, 117 App. 88.

IN ANTICIPATION OF TAXES.

The word anticipation is defined as used in the present for what is to accrue; dealing with income before it is due. Gray v. Board of School Inspectors, 231 Ill. 74.

IN APT TIME.

"We do not think either, that this plea in abatement was filed "in apt time." In Kenney v. Greer, 13 Ill. R. 449, this court says: The statute gives the defendant a privilege which he can waive, and he must be regarded as having done so unless he makes his objection to the writ in apt time. Now this 'apt time' clearly was, at the earliest practical moment. The plea being dilatory, this is the rule. The defendants did not do this, but interposing an insufficient motion, they waived their right to plead in abatement." Holloway v. Freeman, 22 Ill. 202.

IN BAD FAITH.

"'In bad faith' is not a technical term used only in actions for deceit. It is an ordinary expression, the meaning of which is not doubtful. It means 'with actual intent to mislead or deceive another.' It refers to a real and actual state of mind capable of both direct and circumstantial proof." Penn Mut. Life Ins. Co. v. Mechanics', etc., Trust Bank, 73 Fed. 654.

IN CASE ANYTHING BE LEFT.

ple, the taking of chloral by mistake for It has been held that the use in a will distilled water. Metropolitan, etc., Ass'n of such words as, "in case anything be

left after her death," implies a power of disposition by the widow of the whole property devised. Henderson v. Blackburn, 104 Ill. 227; In re Estate of Cashman, 134 Ill. 88; Skinner v. McDowell, 169 Ill. 365; Saeger v. Bode, 181 Ill. 519.

IN CASE OF DEATH WITHOUT ISSUE.

The words, "in case of her death without issue," or "in case she dies without issue," have been construed to mean "without having had issue,—not without surviving issue." Field v. Peeples, 180 Ill. 376; Voris v. Sloan, 68 Ill. 588; Smith v. Kimbell, 153 Ill. 368; King v. King, 215 Ill. 110.

IN CASE OF HIS DEATH.

A will devising property to one and "in case of his death" to another refers, by the quoted expression, to death in the lifetime of the testator. Carpenter v. Sangamon, etc., Co., 229 Ill. 491.

IN CASE OF THEIR DEATH, THEN.

The words, "in case of their death, then to their children, only," means that the remainder to the grandchildren is contingent upon their surviving parents. The word "then" in this connection is an adverb of time, and means "at that time." Strain v. Sweeny, 163 Ill. 603; Kleinhans v. Kleinhans, 253 Ill. 623.

IN CASH.

A statutory requirement that things,—e. g., shares in a company under s. 25, Companies Act, 1867—shall be paid for "in cash," is satisfied not only by actually handing over the amount in moneys counted, but by anything that would sustain a plea of payment in point of law, as distinguished from mere accord and satisfaction; and therefore if there be money due to the person who has to make the payment and that money be set-off against what he has to pay, that will be a payment "in cash" (Spargo's Case, 8 Ch. 407; 42 L. J. Ch. 488: Fothergill's Case, 8 Ch. 270; 42 L. J.

Ch. 481: White's Case, 12 Ch. D. 517; 48 L. J. Ch. 820: Kent's Case, 39 Ch. D. 259: Re Jones & Co., 41 Ch. D. 159; 58 L. J. Ch. 582). But the debt must be presently payable. Re Land Development Assn., 57 L. J. Ch. 977; 39 Ch. D. 259; 59 L. T. 449; 36 W. R. 818.

IN COMMON FORM.

When a will was proven "in common form" in England, it was taken before the judges of the proper court of probate, and the executor produced witnesses to prove that it was the will of the deceased without citing or giving notice to the parties interested, and it was admitted to probate in the absence of such parties. Luther v. Luther, 122 Ill. 563.

IN CONFINEMENT.

"The words 'in confinement' are used to import those who are imprisoned in the county jail, awaiting a final trial, or in the actual custody of the officers of the law, as distinguished from those not having been arrested, or, having been arrested have been discharged from arrest on bail." Ex parte Trice, 53 Ala. 548.

IN CONTEMPLATION OF.

A gift is made "in contemplation of" an event when it is made in expectation of that event and having it in view. Rosenthal v. People, 211 Ill. 309.

IN CONTEMPLATION OF DEATH.

The authorities hold that if the transfer is made "in view of death," the liability for the tax is incurred, and is unaffected by the circumstance that the enjoyment is postponed until the death of the transferer or by any uncertainty as to the identity of the ultimate donee. Rosenthal v. People, 211 Ill. 306; Merrifield v. People, 212 Ill. 400; In re Estate of Benton, 234 Ill. 366. Of course, the words "in contemplation of death," as used in these statutes, do not mean that general expectation of all rational mor-

tals that they will die sometime, but it means an apprehension of death which arises from some existing infirmity or impending peril. Rosenthal v. People, supra; In re Estate of Benton, supra; People v. Carpenter, 264 Ill. 408. See also People v. Kelley, 218 Ill. 509.

IN CURRENCY.

Promissory Note—Assessment of Damages.

A promissory note payable "in currency" is in legal contemplation payable in money, so that on judgment by default, no jury is required to assess the damages. Trowbridge v. Seaman, 21 Ill. 102.

IN CUSTODIA LEGIS.

Property in the possession of a receiver is in custodia legis, the possession of the receiver being that of the court which appointed him. Nevitt v. Woodburn, 190 Ill. 289.

Rents received by sequestrators are in custodia legis. In re Hoare (1892), 3 Ch. 94, citing Delany v. Mansfield, 1 Hog. 235, citing Walker v. Bell, 2 Madd. 21.

Money in the hands of a receiver is not in custodia legis in the same way as if it were in the hands of a sequestrator, but where the object of the action is to ascertain who are the incumbrancers on a particular property and their priorities, or to settle a dispute as to title, it may well be that the receiver holds money coming to his hands on behalf of the person who may prove to be the true owner. In re Hoare (1892), 3 Ch. 94, citing Thomas v. Brigstocke, 4 Russ. 61; Gresley v. Adderley, 1 Swans. 573, 579.

IN DELICTO.

"In Story Eq. Jurisp. § 300, it is said that in cases where both parties are in delicto, concurring in illegal acts, it does not follow that they are in pari delicto, for there may be, and often are, very different degrees in their guilt. One party may act under circumstances of oppression, imposition, hardship or undue influence, or great inequality in conditions of age, so that his guilt may be far less in degree than that of his associate in the offense." Evans v. Funk, 151 Ill. 657, citing White v. Franklin Bank, 22 Pick. 181; Tracy v. Talmage, 14 N. Y. 162-193; Quirk v. Thomas, 6 Mich. 111.

"The distinction which the law makes as between parties in delicto and parties in pari delicto, is fully recognized by the authorities. The law that governs in cases where the parties are not in pari delicto, is well stated by Lord Mansfield in Browning v. Morris, 2 Cowper, 790, in language which seems peculiarly applicable here. He there says: where contracts or transactions are prohibited by positive statute, for the sake of protecting one set of men from another set of men, the one, from their situation and condition, being liable to be oppressed or imposed upon by the other, there, the parties are not in pari delicto; and, in furtherance of these statutes, the person injured, after the transaction is finished and completed, may bring his action and defeat the contract. And the rule is formulated in Rule 98. of Greenhood, Public Policy, thus: 'But where money is paid to one in consideration of something opposed to public policy, or on a contract opposed thereto, and there is a moral compulsion on the part of the payer to pay it, or to make the contract, or where the law regards the payee as the principal offender, and its policy is aimed at his part in the transaction, and is adopted for the payor's * * it may be recovprotection. * ered." Evans v. Funk, 151 Ill. 661.

IN DUE FORM.

Referring to the phrase "in due form," used in the act of Congress with reference to the proving of judicial proceedings in another state, the phrase "in due form" means the mode of attestation in use in the state from whence the record comes. The record must be attested according to that mode; and the certificate of the judge is made the evidence of that fact.

Gundry v. Hancock, 147 Ill. App. 51; Ducommun v. Hysinger, 14 Ill. 250.

IN EACH COUNTY.

Section 14 of article 6 of the Constitution of 1870, providing that the General Assembly shall provide for the times of holding court "in each county," permits, by the quoted expression, a separate enactment applicable to a single county relating to the time of holding court. Mt. Vernon v. Evens, etc., Co., 204 Ill. 34.

IN EXPECTATION.

Section 1 of the Inheritance Tax Act uses the expression "person beneficially entitled * * in expectation" as indicating a title vested and indefeasible, the enjoyment of which is postponed, and refer to the future possession of an estate now vested, and which is subject to the immediate enjoyment of another. People v. McCormick, 208 Ill. 445.

IN FAVOR OF.

"If a person says that he has drawn a bill in favor of another person, he means, I think, that he has drawn a bill of which such other person is the payee. If he says that he has drawn a bill in favor of such other person only, the meaning would be that he has drawn a bill in which such other person is the only payee mentioned." Lord Esher, M. R., in Decroix v. Meyer & Co., 250 B. D. 348.

IN FEE SIMPLE, CLEAR OF ALL INCUMBRANCES.

A contract to convey land to a vendee "in fee simple, clear of all incumbrances whatever" means, by the quoted expression, a good merchantable title, and not necessarily a perfect title of record. Geithmann v. Eichler, 265 Ill. 583.

IN FORM FOLLOWING, TO-WIT.

Means a copy. Gardner v. State, 25 Md. 151.

IN FRONT.

Construed to embrace, in case of a corner lot, not only the front commonly so called, but the line of the lot on the side street. Des Moines v. Dorr, 31 Ia. 89; Morrison v. Hershire, 32 Ia. 271.

IN FULL LIFE.

Neither physically nor civilly dead. The term "life" alone has also been taken in the same sense, as including natural and civil life; e. g., a lease made to a person "during life" is determined by a civil death, but if "during natural life," it would be otherwise. 2 Coke, 48. It is a translation of the French phrase en plien vie. Law Fr. Dict.

IN FULL OF THEIR SHARE OR DIVISION OF AN ESTATE.

The complete measure of such share, part, or division. Dickison v. Dickison, 138 Ill. 544.

IN FULL OF ACCOUNT.

See Accord and Satisfaction.

IN GOOD FAITH.

Section 7 of the Limited Partnership Act, requiring an affidavit that amounts contributed by special partners have been "actually and in good faith paid in," merely emphasizes, by the words "in good faith," but adds nothing to "actually." Crouch v. First, etc., Bank, 156 Ill. 357.

IN GOOD STANDING.

See also Good Standing.

A member is "in good standing" when he complies with the laws, rules, usages and regulations of the order. Independent Order of Foresters v. Zak, 136 Ill. 188.

A member of a beneficiary society is said to be "in good standing," as that expression is used in connection with such societies, when he complies with the laws, rules, usages, and regulations of the order, such compliance necessarily includ-

ing punctual payment of all dues and assessments for which the member may become liable. Royal Circle v. Achterrath, 204 Ill. 564.

IN GROSS.

A way is in gross when there is no dominant estate to which it is attached. Schmidt v. Brown, 226 Ill. 602; Willoughby v. Lawrence, 116 Ill. 19.

IN HER MEANS OF SUPPORT.

A woman is not injured "in her means of support," within the meaning of a statute giving a right of action in such case where the injury is due to furnishing liquor to her husband, where it does not appear that during the time when the injury is alleged to have occurred plaintiff's husband failed to support her, and where it does appear that during such time the family was well provided for and lived in the same way as their neighbors. McCann v. Roach, 81 Ill. 214.

IN HIGHEST ABOVE.

A grant of the right to build a dam "not more than six feet in highest above the bed of the river," means a dam not more than six feet in height above the highest point of the river bed. Haigh v. Lenfesty, 239 Ill. 233.

IN HIS DEMESNE, AS OF FEE.

Taking fee in its secondary sense, as a state of inheritance, it is applicable to and may be had in any kind of hereditaments, either corporeal or incorporeal. But there is this distinction between the two species of hereditaments,-that, of a corporeal inheritance a man shall be said to be seized in his demesne, as of fee; of an incorporeal one, he shall only be said to be seized as of fee, and not in his de-For, as incorporeal hereditaments are in their nature collateral to and issue out of lands and houses, their owner has no property, dominicum, or demesne in the thing itself, but has only something derived out of it, resembling the servitudes, or services, of the civil law. The dominicum of property is frequently in one man, while the appendage or service is in another. Thus, Caius may be seized as of fee of a way leading over the land of which Titius is seized in his demesne as of fee. Wiggins Ferry Co. v. O. & M. Ry. Co., 94 Ill. 93.

IN HIS OFFICE.

The Drainage Act of 1901, requiring the petition provided for to be presented to the town clerk, who shall file the same "in his office," imports, by the quoted expression, that the petition shall be filed in the office of the town clerk, so that it may be examined by persons interested, and the requirement of the statute is not complied with by presenting the petition to the town clerk at a place other than his office. Bishop v. People, 200 Ill. 38.

IN HIS OWN RIGHT.

Holding shares "in his own right," qua qualification of director, does not mean holding beneficially (Pulbrook v. Richmond Mining Co., 48 L. J. Ch. 65; 9 Ch. D. 610; 27 W. R. 377). In that case Jessel, M. R., said, "the company cannot look behind the register as to the beneficial interest." But in Bainbridge v. Smith (41 Ch. D. 462; 37 W. R. 594), Cotton, L. J. (obiter) dissented from that view, whilst Lindley, L. J., said that that conventional meaning had been acted upon so long that he was not prepared to disturb it. Re Bainbridge, 34 S. J. 154, 155; W. N. (89) 288. 33 S. J. 624: Gill v. Continental Union Gas Co., 41 L. J. Ex. 176; L. R. 7 Ex. 332.

The expression "in his own right" in a statute providing that the shares of a judgment debtor "standing in his name, in his own right" may be charged with payment of the judgment debt must be construed to imply that he has the beneficial ownership of them. They do not apply to shares transferred by certain shareholders of a company to a person in order to qualify him as managing director according to the company's articles of association (although those articles of association provide that the qualification of a director shall be the holding "in

his own right" so many shares) where the evidence shows that the transferors retained and meant to retain the beneficial ownership. Cooper v. Griffin (1892), 1 Q. B. 740.

IN HIS TRADE OR BUSINESS.

This phrase, in s. 44 (iii) Bankruptcy Act, 1883, does not comprise property unconnected with a bankrupt's trade or business, although mortgaged by him to secure a trade account. Re Jenkinson, 54 L. J. Q. B. 601; 15 Q. B. D. 441: Colonial Bank v. Whinney, 55 L. J. Ch. 585; 56 Ib. 43; 30 Ch. D. 261; 11 App. Ca. 426.

IN INVITUM.

Compulsorily. Burr v. Carbondale, 76 Ill. 464.

IN ISSUE.

"The words 'contract in issue,' as used in the statute (enabling parties to testify as to such contracts) mean the same as contract in dispute or in question, and relate as well to the substantial issues made by the evidence, as to the merely formal issues made by the pleadings." Hollister v. Young, 42 Vt. 408.

IN JURE.

In Civil Law.

In law. A phrase which denotes the proceedings in a cause before the praetor, up to the time when it is laid before a judex; that is, till issue joined (litis contestatio); also the proceedings in causes tried throughout by the praetor (cognitiones extraordinariae).

In English Law.

In law; rightfully; in right. In jure, non remota causa, sed proxima, spectatur. Broom, Leg. Max. 104. Incorporeal hereditaments, as right of jurisdiction, and said to exist only in jure, in right, or contemplation of law, and to admit of only a symbolical delivery. See Halk. Tech. Terms.

IN JURE NON REMOTA CAUSA SED PROXIMA SPECTATUR.

A maxim, definable as "in law the immediate, and not the remote, cause of any event is regarded." North Chicago S. R. Co. v. Wrixon, 51 Ill. App. 312.

IN LIQUIDATION OF ALL DAM-AGES.

A provision in an agreement to sell land that in case of default by the vendee \$300 shall be paid "in liquidation of all damages" for the breach, is properly treated as a provision for liquidated damages and not as a penalty where no fraud is proved, and where it does not appear that the amount is unconscionable or disproportionate to the damages apparently likely to result from the breach. Pinkney v. Weaver, 216 Ill. 196.

IN MANNER AND FORM.

It is a form commonly in use to aver that the party did not do so and so "in manner and form" as alleged, such words covering matters of both substance and form, and averting the necessity of repeating at length the allegations sought to be brought within the scope of the traverse. Bradley v. Barbour, 65 Ill. 433.

IN MERCY.

To be in mercy is to be at the discretion of the king, lord, or judge in punishing any offense not directly censured by the law. Thus, to be in the grievous mercy of the king is to be in hazard of a great penalty. 11 Hen. VI. c. 6. So, where the plaintiff failed in his suit, he and his pledges were in the mercy of the lord, pro falso clamore suo. This is retained nominally on the record. 3 Sharswood, Bl. Comm. 376. So the defendant is in mercy if he fail in his defense. 3 Sharswood, Bl. Comm. 398.

IN NOMINE DEI, AMEN.

In the name of God, Amen. A solemn form of introduction, anciently used in wills and many other instruments, public and private. The Proemia to the Institutes and Digests of Justinian commence, In nomine Domini nostri Jesu Christi, "In the name of our Lord Jesus Christ." The confirmation of the Code and several of the Novels are introduced with the same form. Some old wills began, In nomine Patris, et Filii, et Spiritus Sancti, Amen. Blount, voc. "Will." Mercantile instruments, such as protests, policies, procurations, etc., frequently began, In Dei nomine, Amen.

IN NUBIBUS.

In the clouds; in abeyance; (Lat.) in custody of law. In nubibus, in mare, in terra vel in custodia legis, in the air, earth, or sea, or in the custody of the law. Taylor. In case of abeyance, the inheritance is figuratively said to rest in nubibus, or in gremio legis; e. g., in case of a grant of life estate to A., and afterwards to heirs of Richard, Richard in this case, being alive, has no heirs until his death, and, consequently, the inheritance is considered as resting in nubibus, or in the clouds, till the death of A., when the contingent remainder either vests or is lost, and the inheritance goes over. See 2 Sharswood, Bl. Comm. 107, note; 1 Coke, 137.

IN OR ABOUT.

In Re Labron (29 S. J. 147), Kay, J., held that residuary bequest of household furniture, plate, books, * * * and other household effects "in or about" testator's dwelling-house—included hayricks, chicken and sheep-troughs, store pigs, poultry and carriages that were on the grounds (40 acres in extent) appertaining to the dwelling-house.

A bequest of all corn etc., "in or about" a mill, held not to include a cargo of wheat consigned to the testator but which, in due course of transit, did not reach the mill till after his death. Lane v. Sewell, W. N. (74) 51.

And there would appear to be no difference, in such a connection as the foregoing, between "in or about," and in "and about." Thus in Gower v. Gower

(Ambl. 612; 2 Eden, 201) the running horses (race-horses?) of a nobleman were held to be included in a bequest of goods and chattels "which should be in and about his dwelling-house and outhouses" (Porter v. Tournay, 3 Ves. 314). But a money bond and a sum of cash (found in an iron chest in testator's house) were held not to pass under a bequest of such parts of personal estate "as should be in and about his house" (Jones v. Sefton, 4 Ves. 166), the short reason given by Loughborough, L. C., being, "there is no annexation." No such consideration as that is however to be discerned in Fitzgerald v. Field (1 Russ. 427), wherein the words "household furniture etc., and utensils in and about my house," were held not to pass farming utensils on lands occupied by testator along with his house.

"In or about," as used in stating a date, see R. v. St. Paul's, Covent Garden, 14 L. J. M. C. 109; 7 Q. B. 232.

A news agent, occupying a shop for the purposes of his business, employed a boy whose work was done partly inside the shop, and partly away from the shop in fetching newspapers and delivering them to the customers. Held, that the whole employment was "in or about a shop" [within the meaning of the Shop Hours Act, 1892, § 3, (55 & 56 Vict. c. 62) which provides that no young person shall be employed in or about a shop for more than seventy-four hours in any one week]. Collman v. Roberts (1896), 1 Q. B. 457.

IN ORDER.

A share, with the indorsed transfer executed by the registered owner of the shares, the name of the transferee being left blank is regarded as being "in order," "according to the custom of bankers and stockbrokers, both in this country and America." But transfers so signed by executors are not "in order," at any rate, without an alteration of the genuineness of the signatures. Per Lord Watson in Colonial Bank v. Cady, 15 App. Cas. 267.

IN PARI DELICTO.

"When the contract is illegal, so that both parties are to some extent involved in the illegality,-in some degree affected with the unlawful taint,-but are not in pari delicto,-that is, both have not with the same knowledge, willingness and wrongful intent engaged in the transaction, or the undertakings of each are not equally blameworthy,-a court of equity may, in furtherance of justice and of a sound public policy, aid the one who is comparatively the more innocent. * * * In speaking of the inequality of guilt, it It exists when the contract is is said: intrinsically illegal, and is of such a nature that the undertakings or stipulations of each, if considered by themselves alone, would show the parties equally in fault, but there are collateral and incidental circumstances attending the transaction and affecting the relations of the two parties which render one of them comparatively free from fault. Such circumstances are imposition, oppression, duress, threats, undue influence, taking advantage of necessities or of weakness, and the like." Baehr v. Wolf, 59 Ill. 470; Paige v. Hieronymus, 180 Ill. 641, 642.

IN PERSON.

"The question is what is meant by the words, 'shall sign the same in person' (in a statute providing that every voter signing a nomination paper shall sign the same in person). The natural meaning of the statute is that a voter shall. with his own hand, write his name and address. If anything less than this is permitted the signing must be done at the request of the voter and in his presence. Previous authority or subsequent ratification is not enough. To hold otherwise would be to give no effect to the words 'in person.'" Commonwealth v. Connelly, 163 Mass. 539.

IN PERSONAM.

A contempt proceeding is a proceeding in personam. Manning v. Securities Co., 242 Ill. 597.

IN POSSESSION.

Section 1 of the Inheritance Tax Act uses the expression "person beneficially entitled in possession" as indicating a title vested and indefeasible in which the right of enjoyment is immediate. People v. McCormick, 208 Ill. 445. In re Estate of Kingman, 220 Ill. 567.

IN POSSESSION OR EXPECTA-TION.

The term "expectation," used in section 1 of the Inheritance Tax Act, where a person shall become beneficially entitled, in possession or expectation, to any property or income thereof, means a condition where the title is vested and indefeasible, the right to immediate enjoyment being postponed. The People v. McCormick, 208 Ill. 445.

"An ordinary vested remainder, not subject to any condition or contingency, as where the property is given to A for life with remainder to B, is, under the statute, immediately taxable as the property of B upon the death of the testator, because there the estate is immediately vested in interest in the remainder-man, his heirs and assigns. Nothing can defeat it. B's right is absolute; his deed will transfer the property; and execution against him and sale thereunder will convey it; his death cannot affect it; he is beneficially entitled to it 'in expectation.' This term 'expectation,' as used in our statute, has reference only to possession. The language is, 'by reason whereof any person shall become beneficially entitled, in possession or expectation, to any property or income thereof.' The term 'expectation' is used, not to denote an expectation of becoming vested both with the title and the possession where neither is now vested, but to denote a condition where the title is vested and the possession is deferred. The term 'in expectation' is used in contradistinction to 'in possession.' Both contemplate a title vested and indefeasible, but in one instance the right of enjoyment is immediate-'in possession;' in the other it is postponed-'in expectation.' As used in this statute, these words last quoted refer to the future possession of an estate now vested and which is subject to the immediate enjoyment of another." In re Estate of Kingman, 220 Ill. 567.

IN REM.

A proceeding in rem is not merely a direct proceeding against property, but any action between the parties where the direct object is to reach and dispose of property owned by them or of some interest therein. For example, suits by attachment against the property of debtors, suits for the partition of land, to foreclose mortgages, to enforce liens or contracts respecting property, may be regarded as proceedings in rem so far as they affect property in the State. Bickerdike v. Allen, 157 Ill. 100, 101.

A writ of sequestration in chancery is a proceeding in rem. Manning v. Securities Co., 242 Ill. 597.

Process "in rem" is founded on a right in the thing, and its object is to obtain the thing itself, or a satisfaction out of it for some claim resting on a real or quasi proprietary right in it. Jones v. McGuirk, 51 Ill. 386.

"Various definitions have been given of a judgment in rem, but all are criticised as either incomplete or comprehending too much. It is generally said to be a judgment declaratory of the status of some subject matter, whether this be a person or a thing. Thus, the probate of a will fixes the status of the document as a will. The personal rights and interests which follow are mere incidental results of the status or character of the paper, and do not appear on the face of the judgment. So, a decree establishing or dissolving a marriage is a judgment in rem, because it fixes the status of the person. A judgment of forfeiture, by the proper tribunal, against specific articles or goods, for a violation of the revenue laws, is a judgment in rem. But it is objected that the customary definition does not fit such a case, because there is no fixing of the status of anything, the whole effect being a seizure, whatever the thing may be. In the foregoing instances, and many others, the

judgment is conclusive against all the world, without reference to actual presence or participation in the proceedings. If the expression 'strictly in rem' may be applied to any class of cases, it should be confined to such as these. A very 'The distinguishing able writer says: characteristic of judgments in rem is that, wherever their obligation is recognized and enforced as against any person, it is equally recognized and enforced as against all persons. It seems to us that the true definition of a judgment in rem is "an adjudication" against some person or thing, or "upon the status of some subject matter," which, wherever and whenever binding upon any person, is equally binding upon all persons." Bartero v. Real Estate Savings Bank, 10 Mo. App. 78.

"The proceeding (for confirmation of a special assessment) is in rem * * * * Appearance and defense do not make the appearance in personam." Per Baker, J., dissenting in Dickey v. Chicago, 164 Ill. 42, citing People v. Dragstran, 100 Ill. 286.

IN RESPECT OF.

Money paid by a third person upon request in payment of a local wager is money paid in respect of a gaming contract within the meaning of a statute making void any promise to pay any person money by him paid "in respect of any contract," etc. Tatham v. Reeve (1893), 1 Q. B. 44.

IN SAID BUILDINGS.

An assignment of a lease of a building demising fixtures attached thereto "in said buildings" points out, by the expression quoted, the locality of the property demised. Stettauer v. Hamlin, 97 Ill. 319.

IN SESSION.

"There is a clear distinction between the assembling together of the individual members of a collective body, and their due organization in such body. All the pupils of a school may have assembled in their school room, ready to enter upon the duties of the day; their teacher may also be there; and yet it may be that the school is not 'in session.'" State v. Gager, 28 Conn. 236.

IN SOLEMN FORM.

See also In Common Form.

When a will was proven "in solemn form" in England it was done upon petition of the proponent for a hearing, and all such persons as had an interest, such as the widow, heirs, next of kin, etc., were notified and cited to be present at the probating of the instrument, at which time interrogatories were propounded to the witnesses by those producing the will and by the adverse party. Luther v. Luther, 122 Ill. 563.

IN STIRPES.

Latin words meaning "according to the roots." Simpson v. Simpson, 114 Ill. 605.

IN SUCH MANNER AS HE MAY.

The granting clause in a deed executed by the superior general of a Roman Catholic religious order "in such manner as he may, and to the extent that he has heretofore acquired title thereto" means that the grantor has remised, released, etc., the premises in such manner as he is authorized to, the word "may" being used, in that connection, in its potential sense, having a direct reference to the grantor's power or authority to convey. Torrence v. Shedd, 112 Ill. 479.

IN TERM.

"The statute provides that any person, etc., may confess judgment, and the judgments entered in vacation shall have the same force and effect as judgments entered "in term." The statute does not in express terms state when the judgments shall be entered, but the subject of the act is 'practice in a court of record,' and we know that it means that judgments may be entered by confession in a court

of record, and this may be done in term time or vacation. If entered in vacation, they are to have the same force and effect as if entered in term. What is understood by the words 'in term?' It means that the judgments confessed in vacation shall have the same force and effect as those entered in the term time of court. We see that a judgment may be confessed in court in vacation as well as at the session." Kellogg v. Keith, 4 Ill. App. 390.

IN TERROREM.

By way of threat, terror, or warning. For example, when a legacy is given to a person upon condition not to dispute the validity or the dispositions in wills and testaments, the conditions are not, in general, obligatory, but only in terrorem. If, therefore, there exist probabilis causa litigandi, the nonobservance of the conditions will not be a forfeiture. 2 Vern. 90; 1 Hill, Abr. 253; 3 P. Wms. 344; 1 Atk. 404.

IN TERROREM POPULI.

(Lat. to the terror of the people.) A technical phrase necessary in indictments for riots. 4 Car. & P. 373.

Lord Holt has given a distinction between those indictments in which the words in terrorem populi are essential, and those wherein they may be omitted. He says that, in indictments for that species of riots which consist in going about armed, etc., without committing any act, the words are necessary, because the offense consists in terrifying the public; but in those riots in which an unlawful act is committed, the words are useless. 11 Mod. 116; 10 Mass. 518.

IN THE BUILDING.

See Attached to the Building.

IN THE CONDUCT OF A SUIT.

Matters done before action brought or after judgment recovered, were not "in the conduct of a suit," within s. 36, Co. Co. Act, 1856, 19 & 20 V. c. 108. Druiff v. Joel, 51 L. J. Q. B. 490; nom. Re Emanuel, 9 Q. B. D. 408: Re Dod & Co. Ex p. Lamond, 21 Q. B. D. 242.

IN THE COUNTY.

See Diligent Inquiry.

IN THE COURSE.

"Debts due to the bankrupt in the course of his trade" (s. 44, iii, Bankry. Act, 1883) mean in connection with his trade. Ex p. Rensberg, Re Pryce, 4 Ch. D. 685.

IN THE EMPLOYMENT OF.

"We do not think that at the time of the injury the plaintiff's intestate was 'in the employment of' the defendant within the meaning of the statute (providing that if by reason of the negligence of a railroad corporation, the life of a person being in the exercise of due diligence and not a passenger or 'in the employment of' the corporation, is lost, the corporation shall be punished). The defendant was not transporting him to or from the place of his daily labor pursuant to the arrangement which existed between them. It had no control or authority over him. He was not traveling on any service for it. His time was his own, and the defendant was not paying him for it, and he could use it as he saw fit, and he was passing over the defendant's road entirely for his own business or pleasure. So long as he was working from day to day for the defendant, it might be said, in a popular sense, that he was in its employment. But we do not think that is the sense in which the words are used in the statute. Otherwise, if at any time, under any circumstances, passing over the railroad on a highway crossing on Sunday, for instance, on an errand to get a doctor for his father or a friend, he was injured by the gross negligence of the defendant's servants while engaged in its business, he would have no right of recovery. Nothing but the plainest language would warrant such a construction. Doyle v. Fitchburg R. Co., 162 Mass. 66.

IN THE FIRST PLACE.

In some of the cases reliance seems to have been placed on such words as "Imprimis," "In the first place," and "First" in determining whether a direction to pay debts charged the realty; but it seems now tolerably well settled that such phrases "are merely introductory words of form, denoting the commencement of the testamentary act; or, if they have any meaning, only denote the order of payment, not the fund out of which payment is to be made" (2 Jarm. 588), nor do they imply priority of payment (Nash v. Dillon, 1 Moll. 236).

"In the first place," "In the next place;" see Re Hardy, 50 L. J. Ch. 241; 17 Ch. D. 798.

IN THE FORM.

Where a statute says that a thing shall be "in the form" prescribed, that means that the form must be strictly and literally followed (Henry v. Armitage, 53 L. J. Q. B. 111; 12 Q. B. D. 257). Where the words are in accordance with the form, the obligation to comply with the Form is strict; though, probably, not so strict as where "in the Form" is used. See "In Accordance with the Form."

IN THE HABIT OF GETTING INTOXICATED.

See Habit of Getting Intoxicated.

IN THE INFORMATION.

A verdict finding defendant guilty as charged "in the information in count 8 of the information" is not so ambiguous as to warrant the court in inquiring whether the jury meant the whole of the information or merely the eighth count. People v. Tenbrook, 194 Ill. App. 16.

IN THE NAME AND BY THE AU-THORITY.

The expression "in the name and by the authority of the People of the State of Illinois," prescribed by section 33 of article 6 of the Constitution of 1870 as the name in which all prosecutions shall be carried on, constitute matter of substance, and the words cannot be dispensed with. Hay v. People, 59 Ill. 95.

IN THE PRESENCE OF THE TES-TATOR.

What constitutes the "presence" of a testator or testatrix, within the meaning of the statute, has been made the subject of much discussion by the courts, but the rule supported by the weight of authority may be stated substantially in the language of a distinguished modern law writer as follows: Contiguity, with an uninterrupted view between testator and subscribing witnesses, is the indispensable element to the physical signing in the testator's presence. The subscription is not invalidated by not having been performed in the same room, or even in the same house, provided it took place within the testator's range or vision, as in case where witnesses left the testator, who lay in bed in one room, and subscribed their names at a table in another room opposite, and in sight through a passage, the doors being thrown open; or where a lobby intervened, but the testator might have seen the subscription made in a gallery through the lobby and a broken glass window; or where the testatrix sat in her carriage, and the will was attested in the attorney's office, but not out of her sight. In all such cases the attestation is held good, on the theory that the testator might at least have seen the signing, considering his position and the state of his health at the time of the transaction; and it is deemed immaterial that he did not see when he might have done so, for the act, being done in his presence, could not have been vitiated by his turning and On the other hand, no looking away. mere contiguity to the witnesses will constitute a "presence" with the act, if the testator's position be such that he can not possibly see them sign, as where, for instance, he occupies his bed chamber and the witnesses subscribe in an outer hall. where they are necessarily hidden from sight by an intervening flight of stairs, or where his position, which he can not

readily change, is such that the witnesses are in reality out of sight. If the subscription is made in an adjoining room, with the door closed, it is not enough that the testator might have seen it had the door stood open; nor will even a subscription in the room he occupies suffice, provided that from his actual position he could not have seen it done. But unless some material obstacle obstructs the vision we here suppose that the testator is sick and feeble, propped up in bed, and requiring some aid in order to bring him into a right position, in whch case, of course, his disability is an important factor in determining whether or not he might have seen the witnesses subscribe. Thus, the will of one who lay in bed with the curtains drawn while the will was attested in front of him was admitted to probate, because he might easily have seen the act by pushing the curtain aside; but that of another was refused probate under like circumstances, upon the distinction that the testatrix was not only too weak to open the curtain herself, but lay helplessly with her back to the witnesses. In fine, the true test, as asserted by the English cases is, not whether the testator saw the witnesses sign, but whether he might have seen them sign. considering his mental condition and his posture at the time of the subscription. Citing Schouler on Wills, sec. 341. The same author further says: "Indeed, to speak generally, if the testator be ill, unable to change his position readily for himself, or confined to his bed, his posture at the time of the attestation should be such as to enable him to perceive his witnesses subscribe; and ability to perceive is here construed with some reference to his physical condition at the time of subscription. But if, while the attesting witnesses are subscribing, the testator, conscious of the act, is in an adjoining room, where, by the mere act of volition, he can witness the attestation, this constitutes a subscription in his presence."

In Reed v. Roberts, 26 Ga. 294, where the testator was in extremis, and feeble from age and disease, and racked with bodily pain, it was held that to make the attestation sufficient, under the statute, the testator's position should be such as to enable him, without change of situation, to see the witnesses subscribe. the opinion the court says: "The object of the law can only be effectuated when the testator is so situated, both as to the will and the witnesses, that he may, if he chooses, see both, in the act of attestation. And it is wholly immaterial whether the attestation be in the same room or in a different room. The rule is the same in both. The will and the witnesses must be in the presence of the testator. He ought to be able, without an effort or change of position, to see both." See, also, Reynolds v. Reynolds, 1 Spear. 253; Ray v. Hill, 3 Strob. 297; Ambre v. Weishaar, 74 Ill. 109; Witt v. Gardiner, 158 Ill. 181, 182, 183.

The statute requires that a will shall be attested, in the presence of the testator, by two or more credible witnesses, who see him sign the will in their presence or acknowledge the same to be his act and deed. This act of attestation consists in the subscription of the names of the witnesses to the attestation clause as a declaration that the signature was made or acknowledged in their presence. It is this act of attestation, by subscribing their names to the will as witnesses thereto, which the statute requires to be in the presence of the testator. The object of the law, as frequently declared, is to prevent fraud or imposition upon the testator, or the substitution of a surreptitious will, and to effectuate that object it is necessary that the testator shall be able to see and know that the witnesses subscribe their names to the paper which he has executed or acknowledged as his The purpose of the statute is not attained by mere ability to see the witnesses or some part of them, but the act of attestation is the thing which must be in the presence of the testator. In the case of Witt v. Gardiner, 158 III. 176, the rule as to what constitutes the "presence" of the testator, within the meaning of the statute, was considered and settled. The rule as so determined is, that "contiguity, with an uninterrupted view between testator and subscribing witnesses, is the indispensable element of the physical signing in the testator's presence." It is immaterial that he does not see if he might have done so, but no mere contiguity of the witnesses will be sufficient if the testator cannot see them sign. Nothing will constitute a "presence," within the meaning of the statute, unless the testator can from his actual position see the act of attestation. Drury v. Connell, 177 Ill. 47.

An attestation is still in the presence of the testator although he may turn and look away and choose not to look at the act. Calkins v. Calkins, 216 Ill. 464.

To be "in the presence of the testator," within the meaning of the rule relating to the attestation of wills, such attestation must take place within the uninterrupted range of the testator's vision. Schofield v. Thomas, 236 Ill. 420.

An attestation is not in the presence of the testator, although the witnesses are in the same room and close to him, if some material obstacle prevented him from knowing of his own knowledge or perceiving by his senses the act of attestation. Calkins v. Calkins, 216 Ill. 464.

The words "in the presence of the testator" are usually and in reference to ordinary men who can see, defined to mean within his sight, at reasonable proximity. Ray v. Hill, 3 Strobh. (S. C.) 300.

IN THE RECEIPT OF.

A bankrupt who by an agreement is entitled to a weekly salary from which however by virtue of another valid agreement his employer exercises the right of deducting a portion is only "in receipt of" the remaining portion within the meaning of a statute empowering the court to order payment to the trustee in bankruptcy of such portion as it shall think just of any salary or income of which a bankrupt is in the receipt. The words do not refer to title, but to actual receipt of the money. In re Shine [1892] 1 Q. B. 522.

IN THE SAME MANNER.

Means by similar proceedings, so far as such proceedings are applicable to the

subject matter. Phillips v. County Commissioners, 122 Mass. 260.

If there were a gift to a class living at testator's death as tenants in common, and that was followed by a gift to another class "in the same manner," that would rather indicate that such other class would take as tenants in common, than that its members were to be ascertained by the fact of being alive at the testator's death (1 Jarm. 746, n.): secus, if the words were "at the same time and in the same manner." Swift v. Swift, 32 L. J. Ch. 479.

IN THE STREET.

A house, although as regards its address it might be said to be in a particular street, yet if it stood in a private garden, some hundred feet from the road, could scarcely fairly be said to be in that street for the purposes of a statute forbidding the erection or bringing forward without the urban authority's consent of any house or part of it beyond the front main wall of the house or building on either side thereof in the same street. Attorney-General v. Edwards [1891] 1 Ch. 194.

IN THE TIME OF THE LAST SICK-NESS.

Section 15 of the Wills Act of 1874, making nuncupative wills valid where, inter alia, it appears that the will was made "in the time of the last sickness," means, by the quoted expression, that the testator, at the time of making his will, supposed that his then sickness would prove his last sickness—in other words, that he was impressed with the probability that he would never recover, and does not necessarily mean that testator at such time was in extremis. Harrington v. Stees, 82 Ill. 54.

IN THIRTY DAYS FROM DE-LIVERY.

A tender of shipment of goods on condition of payment in advance before shipment is not a valid tender of performance under a contract providing that the goods

be shipped on condition of payment "in thirty days from delivery." Bond v. Duntley, etc., Co., 195 Ill. App. 578.

IN THIS STATE.

Notes and bonds placed by an intestate in the hands of a person in this state for safekeeping are not "in this state" within the meaning of section 1 of the Descent Act, prescribing the disposition of the estates of intestates "in this state," where the intestate had a legal residence in Missouri, since the notes and bonds have no locality, and follow that of the owner. Cooper v. Beers, 143 Ill. 31.

IN TRUST.

In the case of Stilwell v. Staples, 19 N. Y. 401, it was held, that a policy of insurance upon goods, "the property of the insured, or held by him in trust," covers cloth intrusted to him for the purpose of being manufactured in clothing. The court says, "It is quite apparent that the words 'in trust,' as used, are not to be taken in any strict or technical sense, which would limit their operation to cases where the title to goods had been vested in a trustee, subject to some specific trust, to be executed by him, for several reasons. In the first place, they would be entirely unnecessary for any such purpose, and would add nothing to the force of the policv. Again, the structure of the clause itself shows the meaning to be different. The antithesis shows, that the words 'in trust,' are meant to cover goods not the property of the insured. But goods held in trust in the technical sense suggested, would be as much his property, as between him and the insurer, as those belonging to him in his own right." Home Ins. Co. v. Favorite, 46 Ill. 270. The term "trust" is not used in any technical sense, but applies to ordinary bailments. Phoenix Ins. Co. v. Favorite, 49 Ill. 262.

IN TRUST FOR ANY PURPOSE.

We gave a construction to this clause in Wilson et al. v. Kirby, Ex'r, 88 Ill. 566, where it was held that the expression, "in trust for any purpose," was not intended to embrace all kinds of trusts in the broadest meaning of the term, as including factors, agents, etc., but that the word, "trust," is here used in the more restricted sense of the term, as referring to special or technical trusts, "and not those which the law implies from the contract." The same distinction is noted and pointed out in the following cases: Weer v. Gand, 88 Ill. 490; Kirby v. Wilson, 98 Ill. 240; Pierce v. Shippee, 90 Ill. 371; Doyle v. Murphy, 22 Ill. 502; Steele v. Clark, 77 Ill. 471; Taylor v. Turner, 87 Ill. 296; Union Nat. Bank v. Goetz, 138 Ill. 127; Wetherell v. O'Brien, 140 Ill. 146.

"Where the deceased testator or intestate has in his life-time received money in his capacity as administrator, executor or guardian, there is no doubt that the money so received is money 'in trust for any purpose' within the meaning of the statute. In such cases there is a special trust in favor of the creditors, distributees or wards. Wilson v. Kirby, Ex'r, supra; Tracy v. Hadden, 78 Ill. 30; Fitzsimmons v. Cassell, 98 Ill. 332. Prior to the passage on April 1, 1872, of the present act in regard to the administration of estates, the clause in regard to the sixth class of claims read as follows: 'Where an executor, administrator or guardian has received money as such, his executor or administrator shall pay out of his estate the amount so received and not accounted for.' Gross' Stat. of 1871, chap. 109, sec. 151, page 822. We have held that, by the change thus made in the law, and by the use of the phrase 'in trust for any purpose,' the legislature 'intended to extend the class of preferred claims.' Wilson v. Kirby, Ex'r, supra. If the statute as changed extended the trusts named in the former statute, then money received by the decedent in his life-time as executor, administrator or guardian was necessarily included in money received in trust for any purpose.

"There is, therefore, no conflict between those cases, like Tracy v. Hadden, supra, and Fitzsimmons v. Cassell, supra, which hold that money received by the decedent in his capacity as executor, administrator or guardian must be paid out of his estate as a preferred claim under the sixth class, and those other cases, like Wilson v. Kirby, Ex'r, supra, and Weer v. Gand, supra, which hold that money received by the decedent as a mere agent does not belong to the preferred class of claims. Cases of the former character refer to special or technical and, in some instances, express trusts, while the latter refer to implied trusts, and trusts where a mere confidence has been reposed or a credit given." Doyle v. Murphy, supra; Svanoe et al. v. Jurgens, 144 Ill. 511, 512.

IN TWELVE MONTHS.

There is no variance between a declaration alleging a promissory note payable "in twelve months after date" and proof of a note payable "twelve months after date," the legal effect of the two notes being the same. Tipton v. Utley, 59 Ill. 28.

IN UNITED STATES GOLD COIN.

An obligation to pay "in United States gold coin" is an obligation to pay in money, or an agreement to deliver a certain weight of standard gold ascertainable by count of coins made legal tender by statute. A contract for the payment of so many dollars in gold and silver is a contract for the direct payment of money, and the judgment in a suit thereon should be entered for coined dollars and parts of dollars when such is the will of the creditor. Hart & Foster v. Flynn's Ex'r, 8 Dana (Ky.) 190; Dewing v. Sears, 11 Wall. 379; Belford v. Woodward, 158 Ill. 136.

IN VALUE.

Where a statute prescribes that something may be done by a majority "in value" of creditors, the value of the securities held by such creditors as are secured is not to be deducted from the amounts of their debts. Whittaker v. Lowe, 35 L. J. Ex. 44; L. R. 1 Ex. 74; 4 H. & C. 109.

IN VIEW OF SOME CONTINGENCY.

The contingency which will authorize an additional tax levy, under section 14

of the Roads and Bridges Act, must be some unusual or extraordinary event in the nature of a casualty which does not happen in the ordinary course; and the certificate of the highway commissioners must state that the tax is desired to meet a contingency and must state what the contingency is. People v. Wabash R. R. Co., 252 Ill. 317.

It has been repeatedly held that before an additional tax levy can rightfully be made under section 14 a contingency must be shown to exist,-that is, the certificate of the commissioners must state that the tax is required to meet a contingency and must state what the contingency is, and the contingency must be some unusual or extraordinary event in the nature of a casualty, which does not happen regularly and in the ordinary course of nature. People v. Lake Erie and Western Railroad Co., 248 Ill. 32. A certificate by commissioners which does not show such a contingency is void and will not support a tax levy. People v. Kankakee and Southwestern Railroad Co., 231 Ill. 109; People v. C., B. & Q. R. R. Co., 258 Ill. 104.

An additional road and bridge tax cannot be levied to meet the ordinary expenses but only because of some contingency, and the fact that such contingency exists, together with a statement showing what the contingency is, must be incorporated in the certificate of the highway commissioners, and a mere verbal statement by the commissioners to the board of town auditors and the assessor relating to such contingency is not sufficient. T., St. L. & W. R. R. Co. v. People, 226 Ill. 561.

IN WHICH THE STATE IS INTER-ESTED AS A PARTY, OR OTHER-WISE.

The words of the statute, "in which the State is interested as a party, or otherwise," means a direct and substantial, as contradistinguished from a purely nominal interest. Hodge v. The People, 96 Ill. 425.

IN WRITING.

The words "in writing," used in a statute, may include printing and any other mode of representing words and letters. Fletcher v. Wall, 172 Ill. 434.

"An agreement in writing" between solicitor and client as to costs, s. 4, 33 & 34 V. c. 28, must be signed by both parties (Ex p. Munro, Re Lewis, 45 L. J. Q. B. 816; 1 Q. B. D. 724). The meaning of "in writing," in such a connection, is "that the terms agreed to should be ascertained in writing, to which the signatures of both parties should be attached" (per Coleridge, C. J., Ib.).

A written document signed by the client but not by the solicitor may be "an agreement in writing," within the meaning of a statute authorizing agreements between solicitor and client with reference to costs. In re Jones [1895] 2 Ch. 719.

"'Contract duly made in writing,' s. 25, Companies Act, 1867; 'Duly made in writing,' means, I suppose, signed by the contracting party" (per Jessel, M.R., Firmstone's Case, 44 L. J. Ch. 618; L. R. 20 Eq. 524), or, rather, by both the contracting parties (Re New Eberhardt Co., 59 L. J. Ch. 73; 6 Times Rep. 56; 38 W. R. 97). See as to what is a "Contract" within this phrase, Firmstone's Case, and Re New Eberhardt Co., sup.; Crickmer's Case, 10 Ch. 614; 44 L. J. Ch. 595: Anderson's Case, 7 Ch. D. 104; 47 I. J. Ch. 273: Forde's Case, 30 Ch. D. 153; 54 L. J. Ch. 724: Buckl. 530.

"I think that the expression 'contract in writing,' in s. 1, Bovill's Act, 28 & 29 V. c. 86, means, 'contract in writing signed by the parties' " (per Jessel, M.R., Pooley v. Driver, 46 L. J. Ch. 467; 5 Ch. D. 458); and accordingly an unsigned contract was held not within the section.

"The statute [of frauds] provides that the party shall not be charged, unless the 'agreement' upon which the action shall be brought shall be in writing. This means the whole agreement, of which the consideration forms an essential and material part. * * * The word 'agreement' comprehends the consideration as well as the promise." Sears v. Brink, 3 Johns. 214.

"The only difference between an 'agreement' and the 'note' of an agreement [as these words are used in the statute of frauds] is, that in the one instance a formal agreement is meant, and in the other, something not so particular in form and technical accuracy, but still containing the essentials of the agreement. The essentials of the agreement must be stated, that is to say, the subject-matter of it, the extent of the liability contracted thereby, if any, and the names of both the parties to it." Williams v. Lake (1859), 29 L. J. Q. B. 1.

INADEQUACY OF CONSIDERA-TION.

"Inadequacy of the consideration, though in itself not decisive, may be an important element in the conclusion arrived at by a court of equity with respect to a contract of sale."

"The general rule of equity in this matter has been thus stated by Lord Westbury: 'It is true that there is an equity which may be founded upon gross inadequacy of consideration. But it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some imposition.'" Pollock Princ. Cont. 596, citing Tennent v. Tennents (1870) L. R. 2 Sc. & D. 6, 9.

"The established doctrine is that mere inadequacy of price is in itself of no more weight in equity than at law. (1) It is evidence of fraud, but, standing alone, by no means conclusive evidence; (2) Pollock Princ. Cont. 596, citing (1) Wood v. Abrey (1818) 3 Mad. 417, 423; Peacock v. Evans (1809) 16 Ves. 512, 517, 10 R. R. 218, 222; Stillwell v. Wilkins (1821) Jac. 280, 282; (2) Cockell v. Taylor (1851) 15 Beav. 105, 115, 21 L. J. Ch. 545.

INALIENABLE.

"Even if there were no authority to the effect that the word 'inalienable' (in a gift to a married woman) amounts to a restraint on anticipation, I should be prepared so to hold; but there is ample authority—Steedman v. Poole, 6 Hare, 193:

Spring v. Pride, 10 Jur. N. S. 646, 647, and other cases" (per Bowen, L. J., Harrison v. Harrison, 58 L. J. P. D. & A. 32; 13 P. D. 186).

INAPPRECIABLE

An "inappreciable" abstraction of water from a stream, has been suggested to mean, so "inconsiderable an amount as to be incapable of value or price" (per Talfcurd, J., Embrey v. Owen, 20 L. J. Ex. 212; 6 Ex. 353); on which Parke, B., in delivering the jdgmt. of the Court of Exchequer, said,-"We are not prepared to say that the learned judge was correct in the interpretation of 'inappreciable' when connected with 'quantity;' nor are we sure that he was not. The word 'unappreciable,' or 'inappreciable,' is one of a new coinage, not to be found in Johnson's Dictionary, Richardson's or Webster's. The word 'appreciate' first appears in the edition of Johnson by Todd, in 1827, with the explanation, 'To estimate and value.'" See per Bowen, L. J., Brunsden v. Humphrey, 14 Q. B. D. 150.

INCAPABLE.

"The words, 'become incapable of serving' [in an act providing that if any person 'shall become incapable of serving' in a public office, such office shall be deemed vacant] refers * * to a personal incapacity, mental or physical, on the part of the incumbent, and not to a supposed incapacity created by a change of the township boundary, leaving the incumbent a non-resident of the township. Non-residence renders one ineligible to the office, but not incapable of serving." Stewart v. Riverside, 68 N. J. Law, 573.

INCENDIARISM.

In a fire policy, a condition that it does "not cover any loss or damage occasioned by or in consequence of Incendiarism," includes any act of incendiarism, wherever committed, e. g., in the adjoining house, which directly causes the loss. Walker v. London & Prov. Insrce., 22 L. R. Ir. 573.

INCEST.

It is immaterial, in order to make a male person guilty of incest within the meaning of section 157 of division 1 of the Criminal Code (J. & A. ¶ 3375) whether the female consents or not. David v. People, 204 Ill. 486.

INCH OF CANDLE.

A mode of sale at one time in use among merchants. A notice is first given upon the exchange, or other public place, as to the time of sale. The goods to be sold are divided into lots, printed papers of which, and the conditions of sale, are published. When the sale takes place, a small piece of candle, about an inch long, is kept burning, and the last bidder, when the candle goes out, is entitled to the lot or parcel for which he bids. Wharton.

INCHOATE RIGHT OF DOWER.

A right which may ripen into an interest in the husband's real estate in case he should predecease the wife. Lavery v. Hutchinson, 249 Ill. 94.

The court, in considering the nature of the inchoate right of dower, in the case of Kauffman v. Peacock, 115 Ill. 212, said that whether it would ever become more than an expectancy would depend upon a fact which might never occur,—that the wife should survive the husband and become entitled to dower; and that the inchoate right is not property which can be measured, and does not become property until the death of the husband. Cowan v. Kane, 211 Ill. 576.

INCIDENT.

That which appertains to and follows the principal thing. Chicago, D. & V. R. Co. v. Smith, 62 Ill. 274.

An incident is that which follows the more worthy or principal. Neal v. East Tenn. College, 6 Yerg. (Tenn.) 206.

INCIDENT OF LAND.

"According to the law of England, gold and silver mines, until they have been

aptly severed from the title of the crown, and vested in a subject, are not regarded as * * incidents of the land in which they are found." British Columbia v. Canada, 14 App. Cas. 295.

INCIDENTAL.

"'Incidental' * * is defined by Webster to mean casual, accessory or collateral—in other words, something additional." Morris J., Middleton v. Parke (1894), 3 Ap. D. C. 160.

INCIDENTAL POWER.

See also Implied Power.

An incidental power is one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has a slight or remote relation to it. Hood, v. N. Y. & N. H. R. R., 22 Conn. 1; Franklin Co. v. Lewiston Savings Institution, 68 Maine 43; People v. Chicago Gas Trust Co., 130 Ill. 283.

Corporations possess what are known as incidental powers, but incidental powers are such as are necessary in order to enable a corporation to carry into execution the specific powers conferred upon it by its charter. "Implied powers exist only to enable a corporation to carry out the express powers granted,--that is, to accomplish the purpose of its existence,and can in no case avail to enlarge the express powers, and thereby warrant it to devote its efforts and capital to other purposes than such as its charter expressly authorizes, or to engage in collateral enterprises not directly but only remotely connected with its specific corporate purposes. A power which the law will regard as existing by implication must be one in a sense necessary,—that is, needful, suitable and proper to accomplish the object of the grant, and one that is directly and immediately appropriate to the execution of the specific powers; and not one that has but a slight, indirect or remote relation to the specific purposes of the corporation." People v. Pullman Palace Car Co., 175 Ill. 125, and cases and authorities there cited. The enumeration of powers in the charter of an incorporation, or in the act under which it is incorporated, implies the exclusion of all powers not enumerated. Thomas v. Railroad Co., 101 U. S. 82; First M. E. Church of Chicago v. Dixon, 178 III. 270.

These implied or incidental powers which a corporation possesses in order to carry into effect the legitimate purposes of its creation are not limited to such as are absolutely indispensable to this end, but may include such powers, not expressly prohibited by the charter, as are reasonably necessary, by fair intendment, for the accomplishment of such purposes. Alton Manf. Co. v. Biblical Institute, 243 Ill. 301.

"Incidental power is * * accessory or additional power—connected, it is true, with the main subject, and yet additional." Morris, J., Middleton v. Parke (1894), 3 Ap. D. C. 160.

INCIDENTAL USE.

A railroad company may continue to condemn for such incidental uses as the growth of business demands. The use of real estate for the main line of a railway company is not an "incidental use." C., V. & C. Ry. Co. v. Woodyard, 226 Ill. 337.

INCLOSED LANDS.

The words "inclosed lands," in ss. 97, 98, Turnpike Act, 3 G. 4, c. 126, are used in their popular sense, as denoting lands which are actually inclosed within fences (Tapsell v. Crosskey, 10 L. J. Ex. 188; 7 M. & W. 441). See Allaway v. Wagstaff, 29 L. J. Ex. 51; 4 H. & N. 681.

INCOMBUSTIBLE MATERIAL.

A material which is partly combustible and partly incombustible is not an "incombustible material" within the meaning of a statute providing that roofs of houses must be covered with incombustible materials. Its character is not redeemed even by the fact that its use may afford an actual protection from or may mitigate the mischiefs of a fire. Payne v. Wright [1892] 1 Q. B. 104.

INCOME.

A will devising to a wife "sufficient income from my property * * * for

her support during her natural life" refers, by the word "income," to the sum of money yearly equal to her reasonable support, without reference to how it is derived, whether from the income of the property, or from its sale, and not to the sum which the estate would produce during the year. Sowards v. Taylor, 42 Ill. App. 281.

Income means the gain which proceeds from property, labor and business. Sims's Appeal, 44 Penn. St. 247. The income of an estate means nothing more than the profit it will yield, after deducting the charges of management. The rents and profits of an estate, the income or net income of it, are all equivalent expressions. Andrews v. Boyd, 5 Greenl. (Me.) 203.

"Income [as used in a statute exempting incomes from taxation] means that which comes in and is rescued from any business or investment of capital, without reference to the outgoing expenditures." Coal. Tax. 221.

Income, as applied to the affairs of individuals, expresses the same idea that revenue does when applied to the affairs of government. People v. Niagara Suprs., 4 Hill, 20; affirmed by Hill, 504; Miller v. Douglass, 42 Tex. 288; New Orleans v. Hart, 14 La. An. 803; New Orleans v. Fossman, 14 La. An. 865.

"Income" signifies "what comes in" (per Selborne, L. C. Jones v. Ogle, 42 L. J. Ch. 336). It "is as large a word as can be used" to denote a person's receipts (per Jessel, M.R., Re Huggins, 51 L. J. Ch. 938).

A devise of the "income" of realty may pass the property itself; but the ordinary acceptation of "income," in a devise or bequest, is annual income (Re Little, Mather v. Roddy, W. N. (81) 138).

"Income," s. 4, St. John's, New Brunswick, Assessment Act (31 V. c. 36), means the balance of gain over loss in any financial year (Lawless v. Sullivan, 50 L. J. P. C. 33; 6 App. Ca. 373); but where Commissioners are, by statute, authorized to receive certain moneys, and at the same time directed to pay a portion to another body, the gross sum received is to be deemed the "income" of the Commission-

ers. R. v. Southampton Commrs., L. R. 4 H. L. 449; 39 L. J. Q. B. 253.

A voluntary allowance granted by the Secretary of State for India to an officer of the Indian army on compulsory retirement, to which the recipient has no claim or right, and which can be withdrawn at any time at the discretion of the secretary of state, is not "income" within the meaning of the bankruptcy act 1883 (46 & 47 Vict. c. 52) § 53 sub § 2, which provides that "Where a bankrupt is in the * * * income receipt of the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the * * * income, * * * or of any part thereof, to the trustee." Ex parte Webber, 18 Q. B. D. 111, citing Ex parte Wicks, 17 Ch. D. 70.

"'Income' [within the meaning of the bankruptcy act, 1869 (32 & 33 Vict. c. 71) § 90, which provides that where the bankrupt is in the receipt of a salary or income the court upon application of the trustee shall make such order as it thinks just for the payment of such salary or income or any part of it to the trustee]. * *, must mean [according to the rule of construction ejusdem generis] 'income' in the nature of a 'salary' * * the question is whether the income which a man earns by the exercise of his personal skill, and which is dependent upon the accident whether people come to consult him or not, and upon whether he chooses to be consulted [such as the prospective earnings of a surgeon], is income in the nature of a salary. It is only necessary to state the case to shew that it is not. Therefore these earnings are not within § 90." Brett, M. R., in ex parte Benwell, 14 Q. B. D. 307; 54 L. J. Q. B. 53, 51 L. T. 677.

"Income," in a statute [Married Women's Property Act, 1882, c. 75 §§ 1, 19] restraining a married woman's anticipation of her income, does not include income accrued due. Hood Barrs v. Heriot [1896] A. C. 174; reversing Hood Barrs v. Heriot [1895] 2 Q. B. 212, and overruling Hood Barrs v. Cathcart [1894] 2 Q. B. 559, 570.

A rise in value of some of the deben-

tures of a company which had previously purchased them and placed the amount of depreciation owing to a former fall in them to revenue must be treated by the liquidator as income and not as capital, it being merely a restitution to profits of what had been previously taken from profits. Bishop v. Smyrna, etc., R. Co. [1895] 2 Ch. 596.

The "income" to which, under a will, a tenant for life of shares has a right consists only of the dividends or bonuses declared by the company during his or her life, and not profits arising from a realization of shares. In re Armitage [1893] 3 Ch. 337.

The occupation of a house rent-free, which house is already taxed as property and from which the occupier is debarred from making any profit is not income in any sense—nor, of course, within the meaning of a Taxing Statute. Per Lord Halsbury L. C. in Tennant v. Smith [1892] A. C. 150.

Distinguished from Profits.

"Profits" and "income" are sometimes used as synonymous terms; but, strictly speaking, "income" means that which comes in, or is received from any business or investment of capital, without reference to the outgoing expenditures; while "profits" generally mean the gain which is made upon any business or investment when both receipts and payments are taken into account. People v. Supervisors of Niagara, 4 Hill (N. Y.) 23.

INCOME BONDS.

Income bonds, as the term is ordinarily used, are bonds which carry interest only so far as the interest is earned from the net income of the corporation, within an interest period. They bear a close resemblance to capital stock. Such interest is ordinarily not cumulative. 2 Fletcher Cyclopedia Corporations 1922.

INCOME DERIVED.

From a property means, in construing a will in which such income is be-

queathed, not the whole income which would be derived from it without any deduction, but the income after making proper deductions in respect of the charges of management. In re Redding, [1897] 1 Ch. 879.

INCOMPATIBLE OFFICES.

Offices are said to be incompatible and inconsistent so as to be executed by the same person, first, when from the multiplicity in them, they cannot be executed with care and ability; or, second, when, their being subordinate and interfering with each other, it induces a presumption that they cannot be executed with impartiality and honesty. People v. Green, 46 How. Pr. R. (N. Y.) 170.

INCOMPATIBILITY.

"The elements and qualities which may create incompatibility between persons elude exact definition, so varied are the circumstances and so dependent is such a state of feeling upon education, habits of thought and peculiarities of character. It must be assumed that the parties understood the wide signification of the word and used it understandingly [in a contract for employment that could be annulled for 'dishonesty, incapacity, incompatibility or breach of the agree-* * * The word is not a ment'] word of art, or of technical or local meaning, or having two distinct meanings, circumstances which have been held to justify parole evidence of the meaning of a word used in a written contract. (Greenl. Ev. § 295.) The largeness of the meaning of the term * * * is no reason for limiting its interpretation, nor does it furnish any reason for permitting parole evidence in explanation." Gray v. Shepard, 147 N. Y. 180.

INCOMPETENCY.

Incompetency exists not alone in physical and mental attributes, but also in the disposition with which a servant performs his duty. If, instead of being watchful, he becomes inattentive and habitually neglects his duties, he becomes unreli-

able, and although possessing the mental and physical ability to do well the work assigned him his disposition toward the general safety of his fellow-servants renders him an incompetent man. Coppins v. N. Y. C. & H. R. R. Co., 122 N. Y. 557; Consolidated Coal Co. v. Seniger, 79 Ill. App. 460, 461.

The word "incompetency," as applied to guardianship, is one, in my judgment, of broad signification and comprehensiveness, like the word unsuitableness, as applied to a trustee. In my opinion, it has relation, not merely to the mental condition and moral status of a testamentary guardian, but imports that, in the interests of the child in respect of nurture, care, education, and safety, the court may take into consideration the relative, social and pecuniary position of the guardian and the infant. Damarell v. Walker, 2 Redf. Surr. Rep. (N. Y.) 205.

INCOMPETENT.

One who is without the legal capacity to testify. Hronek v. People, 134 Ill. 151.

One is incompetent, who is wanting in the requisite qualifications for the business entrusted to him. Metropolitan El. Ry. Co. v. Fortin, 203 Ill. 460; Staunton Coal Co. v. Bub, 119 App. 281.

INCONSISTENCY.

"One definition of 'inconsistency' is 'repugnance.' • • • These words though not exactly synonymous, may be, and often are, used interchangeably. A law providing for a bail bond in criminal cases is different from a law providing for a recognizance in such cases; but it is neither repugnant to nor inconsistent with it. It is merely cumulative." Sivan v. United States, 3 Wyo. 151.

INCONSISTENT STATUTES.

"If two inconsistent Acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. Every Act of Parliament must be considered with reference to the state of the law subsist-

ing when it came into operation, and when it is to be applied; it cannot otherwise be rationally construed. Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment." The Dean, etc., of Ely v. Bliss (1842), 5 Beav. 574; 11 L. J. Ch. 351, Lord Langdale, M. R.

INCORPORATED TOWN.

See Town.

INCORPORATION.

Distinguished from Corporation.

The one is a political institution; the other only the act by which that institution is created. Toledo Bank v. Bond, 1 Ohio St. 642.

INCORPOREAL HEREDITAMENT.

The right of the owner of land abutting on a street that the street be kept forever open to the sky is an incorporeal hereditament. Field v. Barling, 149 Ill. 571.

"What is the definition of an incorporeal hereditament? Blackstone has put it for us in his commentaries [Ed. of 1826, Book II, 20]. 'It is a right issuing out of a thing corporate (whether real or personal) or concerning, or annexed to, or exerciseable within, the same. It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like; but something collateral thereto, as a rent issuing out of those lands or houses.' In my opinion with regard to that definition, you cannot possibly say that this duty is a hereditament within the meaning of the section [of the statute 9 Geo. 2, c. 36, which prevents from being bequeathed for charitable purposes all 'manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, what-It is not in any way inseparably connected with, and certainly not in any way issuing out of any land. is a duty which is to be collected by the

commissioners [for the haven of Great Yarmouth] on vessels which may come into the roads, or the haven, or in respect of goods which are landed, or exported, from the haven, or from or to vessels which are in the roads. very true that the commissioners have duties to perform, and duties connected with land, and probably that is the reason why the right to claim these tolls was vested in them. But that does not make the tolls in any way an incorporeal hereditament so connected with the land as to be within the mischief of the statute, or within the meaning of the statute." Cotton, L. J. in In re Christmas, 33 Ch. D. 338.

INCREASE.

As applied to land, or to the soil, means that which grows out of it, or that which is produced by the cultivation of it. De Blane v. Lynch, 23 Tex. 27.

Statutes sometimes prohibit the "increase" of bonded indebtedness without the consent of a majority of the stock. However, of course, a constitutional provision or statute providing that a bonded debt shall not be "increased," except at a stockholders' meeting, etc., does not apply to an original bond issue. Furthermore, there is no "increase of indebtedness" where there is merely a change in the form of the debt, as where the security is issued to discharge a purchase-money indebtedness. 2 Fletcher Cyclopedia Corporations 1933.

INCUMBENT.

"'Incumbent' commeth from the verb incumbo, that is, to be diligently resident, id est, obnixe operam dare; and when it is written encumbent, it is falsely written, for it ought to be incumbent, as Littleton doth here (s. 180). And therefore the law doth intend him to be resident on his benefice." Co. Litt. 119 b. See Termes de la Ley.

An incumbent of an office is one who is legally authorized to discharge the duties of that office. State v. McCollister, 11 Ohio 50.

INCUMBRANCE.

It is defined by Webster: "1. A burdensome and troublesome load; anything that impedes motion or action, or renders it difficult or laborious; clog; impediment; hindrance; check. 2. (Law.) A burden or charge upon property; a legal claim or lien upon an estate, which may diminish its value." Burrill's Law Dictionary defines it: "A burden or charge upon property; a legal claim or lien upon an estate; such as a judgment or mortgage." Cream City Mirror Plate Co. v. Swedish B. & L. Ass'n, 74 Ill. App. 365.

A permanent right which may wholly defeat the plaintiff's title. It is a weight on his land, which must lessen its value. Prescott v. Trueman, 4 Mass. 630.

It is an estate or interest in, or right to, the land granted, to the diminution of its value. Newcomb v. Fiedler, 24 Ohio St. 466.

Every right to or interest in land which may subsist in third persons, to the diminution of the value of the land, but consistent with the passing of the fee by the conveyance, is an incumbrance. Kelsey v. Remer, 43 Conn. 138; Fritz v. Pusey, 31 Minn. 369; Prescott v. Trueman, 4 Mass. 627.

An embarrassment of an estate or property so that it cannot be disposed of without being subject to it. Kelly v. Stephens, 39 Georgia 468.

An incumbrance is a lien upon an estate. DePeyster v. Murphy, 7 Jones and Spen. (N. Y.) 264.

As applied to an estate in land, it may fairly include whatever charges, burdens, obstructs, or impairs its use, or prevents or impedes its transfer. Anonymous. 2 Abbott's New Cases (N. Y.) 63.

"An incumbrance is a legal claim in favor of one person on the estate of another." Robinson v. Wiley, 15 N. Y. 492.

Public Office.

Public office is not the subject of incumbrance. People v. Kipley, 171 Ill. 71.

Adverse Equitable Claim Excluded.

An adverse equitable claim is not an "incumbrance" within the meaning of the

covenants of a warranty deed conveying real estate. Marple v. Scott. 41 Ill. 61.

INCUR AN INDEBTEDNESS.

"To "incur an indebtedness" is to become liable for or subject to an indebtedness." State ex rel. Marinette, T. & W. R. Co. v. Tomahawk Common Council, 96 Wis. p. 91.

INCURABLE INFIRMITY.

An infirmity, incurable in its nature, is one which, in consequence of what constitutes it what it is (which we have agreed to call its nature) admits of no cure. St. Romes v. Pore, 10 Martin (La.) 208.

INDEBTEDNESS.

A word of large meaning. It is used to denote almost every kind of pecuniary obligation originating in contract. Merriman v. Social Manuf. Co., 12 R. I. 179.

The word indebtedness used in the statute is not to be construed to mean a fixed sum due, but any liability that may have been incurred, either by contract express or implied, or in tort, renders a party a debtor within the meaning of the law. Bump on Fraudulent Conveyances, 485; Bay et al. v. Cook, 31 Ill. 336; Seward v. Jackson, 8 Cow. 406; Vanwoych v. Steward, 18 Wend.; Swartz v. Brown, 27 Penn.; McLaughlin v. Bank of Potomac, 7 Howe 220; Manhattan Co. v. Osgood, 15 John 162; Crane v. Stickler, 15 Vt. 252; Mattingly v. Wulke, 2 Ill. App. 172.

One of the earliest cases in which the word as used in the Constitution is defined is City of Springfield v. Edwards, 84 Ill. 626, in which it was held that the indebtedness specified in the constitution is the voluntary incurring of a legal liability to pay; that a debt payable in the future is no less a debt than if payable presently, and a debt payable upon a contingency, as upon the happening of some event, such as the rendering of service or delivery of property, is no less a debt, and therefore within the inhibition; that if a contract or undertaking contemplates a liability to pay, the debt exists; and it makes no difference whether the debt be

for necessary current expenses or for something else,—it is nevertheless an indebtedness contemplated by the constitution. To the like effect are the following: Law v. People, 87 Ill. 385; Howell v. City of Peoria, 90 Ill. 104; Cublertson v. City of Fulton, 127 Ill. 30; Prince v. City of Quincy, 128 Ill. 443; City of Chicago v. McDonald, 176 Ill. 404; Village of East Moline v. Pope, 224 Ill. 392.

INDECENCY.

An act against good behavior and a just delicacy. McJunkins v. State, 10 Ind. 144.

INDECENT.

A prostitute accosted four men in the Haymarket, for the purposes of her trade, and in each case put her arm into that of the man and walked by his side until he threw her off; the Middlesex Sessions held she had not behaved in an "indecent manner" within s. 3, 5 G. 4, c. 83. R. v. De Ruiter, 44 J. P. 90.

INDEFINITE FAILURE OF ISSUE.

An indefinite failure of issue means a failure of issue whenever it may happen, without fixing any time, or a certain and definite period within which it must happen. 4 Kent's Com. marg. page 274; 1 Bouvier's Law Dic. page 642. An executory devise which is to take effect upon an indefinite failure of issue is void for remoteness. 4 Kent's Com. marg. page 274; Smith v. Kimbell, 153 Ill. 373.

A failure at the death or at any time afterwards. Strain v. Sweeny, 163 Ill.

A failure of issue whenever it shall happen sooner or later, without any fixed, certain or definite period within which it must happen. It means the period when the issue or descendants of the first taker shall become extinct, and where there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event; or, in the words of the statute, de donis, referring to the first taker, if his issue shall fail. Hall v. Chaffee, 14 N. H. 220.

Indefinite failure of issue is the period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event. Huxford Admr. v. Milligan, 50 Ind. 546.

Chancellor Kent's Definition.

A failure of issue whenever it shall happen, sooner or later, without any fixed, certain or definite period within which it must happen; the period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event. O'Hare v. Johnston, 273 Ill. 475.

INDEMNITY.

The word, "indemnify," simply means, as used in a lease, to make whole. So the words, "to secure and to hold harmless," as used in a lease, have the same meaning. Those words do not signify that one may be overpaid, or underpaid, but exactly paid, his damages. Kay Gee Amusement Co. v. Cave, 177 Ill. App. 254.

An "indemnity" is a contract, express or implied, to indemnify, and the liability under which is coterminous with the liability it is intended to cover. Pontifex v. Foord, 53 L. J. Q. B. 321; 12 Q. B. D. 152: Catton v. Bennett, 53 L. J. Ch. 685; 26 Ch. D. 161: Speller v. Bristol Steam Nav. Co., 53 L. J. Q. B. 322; 13 Q. B. D. 96: Carshore v. N. E. Ry., 29 Ch. D. 344: Birmingham Land Co. v. Lond. & N. W. Ry., 34 Ch. D. 272; inf.: Tritton v. Bankhart, 56 L. J. Ch. 629; 56 L. T. 306; 35 W. R. 474.

"Now in my view the word indemnity in the rule which we have now to construe (rules of supreme court, 1883, order XVI, T. 48, which provides that where a defendant claims to be entitled to indemnity over against any person not a party he may, by leave of the court, issue a third party notice and serve it on such person), means to express a direct right either at law or in equity to indemnity as such, and I think that this right has to be contrasted, and not to be

for a moment confounded, with the right to damages which arises either from a breach of contract or from tort. Let me take in the first instance the case of a A breach of conbreach of contract. tract gives rise, or may give rise, to a right to damages, but those damages are not the subject of the contract. arise from the breach of the contract, and therefore they are in no sense the subject of the contract itself. When a man contracts that he will do a thing, it can hardly be taken as implying a contract as to what will arise if he does not do the thing. In the same manner with regard to tort, the right to damages for tort does not arise from any implied contract that if I do a wrong I will indemnify the person wronged for the wrong I have done. It is the common law right which everybody has to damages for a wrong which has been done to him. Therefore the right to such damages is not a right to indemnity, although when you come tc ascertain what the measure of damages is, it may be that indemnity will properly express that measure of damages." Fry, L. J., in Birmingham, etc., Land Co. v. London, etc., R. Co., 34 Ch. D. 276-Bowen, L. J., in delivering judgment, said (p. 274): -- "it is quite clear to my mind that a right to damages, *, is not a right to indemnity as such. It is the converse of such a right. A right to indemnity as such is given by the original bargain between the parties. The right to damages is given in consequence of the breach of the original contract between the parties. It is an incident which the law attaches to the breach of a contract, and is not a provision of the contract itself."

INDENTURE.

The word "indenture" implies a seal. Morrill v. Baggott, 57 Ill. App. 532.

A formal written instrument made between two or more persons in different interests, as opposed to a deed poll, which is one made by a single person, or by several having similar interests.

Its name comes from a practice of indenting or scolloping such an instrument on the top or side in a waving line. This is not necessary in England at the present day, by St. 8 & 9 Vict. c. 106, § 5, but was in Lord Coke's time, when no words of indenture would supply its place. 5 Coke, 20. In this country it is a mere formal act, not necessary to the deed's being an indenture. See Bac. Abr. "Leases" (E 2); Comyn, Dig. "Fait" (C, and note d); Litt. § 370; Co. Litt. 143b, 229a; Cruise, Dig. tit. 32, c. 1, § 24; 2 Sharswood, Bl. Comm. 294; 2 Washb. Real Prop. 587 et seq.; 1 Steph. Comm. 447. The ancient practice was to deliver as many copies of an instrument as there were parties to it. And as early as King John it became customary to write the copies on the same parchment, with the word chirographum, or some other word, written between them, and then to cut them apart through such word, leaving part of each letter on either side the line. which was at first straight, afterwards indented or notched. 1 Reeve, Hist. Eng. Law, 89; Du Cange; 2 Washb. Real Prop. 587 et seq.

INDEPENDENT CONTRACTOR.

In Hale v. Johnson, 80 Ill. 185, it was said: "One who contracts to do a specific piece of work, furnishing his own assistants and executing the work either entirely in accordance with his own ideas or in accordance with a plan previously given to him by the person for whom the work is done, without being subject to the orders of the latter in respect to the details of the work, is clearly a contractor and not a servant." This definition of an independent contractor was approved in Whitney & Starette Co. v. O'Rourke, 172 Ill. 177, in which case it was held one engaged in the construction of a building who employs and pays the laborers himself, without being under the control of the owner of the building, is an independent contractor, though he is paid, as his compensation, a percentage on the cost of erection. Linquist v. Hodges, 248 Ill. 501, 502. See also Jefferson v. Jameson & Morse Co., 165 Ill. 138; Foster v. Wadsworth, 168 Ill. 514; Consolidated Fire Works Co. v. Koehl, 190 Ill. 145; Bayer v. Rallroad Company, 68 Ill. App. 219; Crudup v. Schreiner, 98 Ill. App. 337; Chicago Hydraulic Press Brick Co. v. Campbell, 116 Ill. App. 327.

"The test generally applied in answering the question, who are independent contractors? is 'independence of control in employing workmen and in selecting the means of doing the work.' proper criterion by which to determine whether in a given case the relation of master and servant exists is found in the right of the master to order and control the other in the performance of the work. A master is one who not only prescribes to the workman the end of his work, but directs, or at any moment may direct, the means also; or as it has been put "retained the power of controlling the work." Again it is said the true test by which to determine whether one who renders service for another, does so as a contractor or as a servant, is to ascertain whether he renders service in the course of an independent occupation in which he represents the will of his employer only as to the result of the work and not as to the means by which it is accomplished." Moll on Independent Contractors and Employers' Liability, pp. 30, 31. "In actual affairs an independent contractor generally pursues the business of contracting, enters into a contract with his employer to do a specified piece of work for a specified price, makes his own sub-contracts, employs, controls, pays and discharges his own employees, furnishes his own material and directs and controls the execution of the work. Where these conditions concur there is, of course, no difficulty in determining his character as such. It is only where one or more of them is lacking that a question arises. The one indispensable element to his character as an independent contractor is that he must have contracted to do a specified work and have the right to control the mode and manner of doing it." 1 Shearman & Redfield on Negligence (6th Ed.), p. 396. To the same effect is 16 Am. & Eng. Encyc. Law (2nd Ed.), p. 187.

"An independent contractor is one who undertakes to produce a given result without being in any way controlled as to the method by which he attains that result."

1 Jaggard on Tort, sec. 73, p. 228. "In

every case, the decisive question is, Had the defendant the right to control, in the given particular, the conduct of the person doing the wrong? Does he reserve himself the essential powers of a master?" 1 Thompson on Negligence (2nd Ed.), sec. 622, pp. 570, 571.

"The absolute test is not the exercise of power of control, but the right to exercise power of control. Although the trustees should be across the Atlantic, nevertheless, if they retained the power to control and direct the work, they would be liable; because it is the possession of the right of interference, the right of control, that puts upon a party the duty of seeing that the person who stands in that relation does his duty properly. If they have retained to themselves the right of directing the mode of doing the work, then, if the work is done wrong, the simple principle is that they are responsible." Linnehan v. Rollins, 137 Mass. 123. To the same effect are 16 Am. & Eng. Encyc. Law, supra, p. 188; 26 Cyc. of Law and Proc., p. 1547, and Moll on Independent Contractors and Employers' Liability, p. 43. "The relation of master and servant does not cease 'so long as the master reserves any control or right of control over the method and manner of doing the work, or the agencies by which it is to be effected." Speed v. Atlantic & P. R. Co., 71 Mo. 303.

A person employed to do certain work may be an independent contractor as to certain parts of the work and merely a servant or agent of the party employing him as to the residue of the work. Moll on Independent Contractors and Employers' Liability, p. 40. To the same effect is Shearman & Redfield on Negligence (6th Ed.), p. 399, and Speed v. Atlantic & P. R. Co., supra, pp. 303, 309. If a defendant has retained the right to control in the given particular the conduct of the person doing the wrong, he has reserved to himself the powers of a master as to that particular. 1 Thompson on Negligence, supra, p. 570. The relation of master and servant exists "so long as the master reserves any control or right of control over the method and manner of doing the work, or the agencies by which it is to be effected." Wood on Master and Servant, sec. 281.

"A reservation by the employer of the right by himself or his agent to supervise the work for the purpose merely of determining whether it is being done in conformity to the contract does not affect the independence of the relation." 16 Am. & Eng. Encyc. of Law (2nd Ed.), p. 188. While the owner has a right to see that the work is constructed according to a contract, and an independent contractor is not converted into a servant by provisions in a contract which reserve to the employer certain rights of supervision during the progress of the work and at its completion, nevertheless, this right of supervision means merely a right to approve or disapprove the results of the work, and it does not give the owner the right to make directions as to the mode of arriving at such results. Devine v. Rosenbaum Brothers, 192 Ill. App. 37, 38,

In the case of Pioneer Construction Co. v. Hansen, 176 Ill. 100, the following "The rule of redoctrine is approved: spondeat superior does not apply, if the party employed to do the work, in the course of which the injury occurs, is a contractor pursuing an independent employment and, by the terms of the contract, is free to exercise his own judgment and discretion as to the means and appliances that he may see proper to employ to do the work, exclusive of the control and direction in this respect of the party for whom the work is being done." Citing Deford v. State, 30 Md. 179; Smith v. Milwaukee, etc., Exchange, 91 Wis. 360; Kelley v. Mayor, 11 N. Y. 435; Reedie v. Railway Co., 4 Exch. 244; Hobbit v. Railway Co., 4 Exch. 254. Many authorities upon this subject are reviewed in Chicago City Railway Co. v. Hennessey, 16 Ill. App. 153, where it is said: "The principle deducible from the authorities in this and other states seems to be that when an entire work, including materials, is committed, without any right of supervision, interference or control, to a competent and independent contractor the party authorizing the work is exempt from liagence or wrongful act of the contractor, which the person letting the work had no reason to anticipate." Galatia Coal Co. v. Harris, 116 App. 74.

The general rule is stated by Bishop on Non-Contract Law (sec. 602), to be, that "a contractor who simply undertakes to bring about a result after his own methods is not a servant" of his employer, and the latter is not liable for such contractor's negligence, while on the other hand, one "who, though he is to have a stipulated price for a thing, executes it under the direction and superintendence of the employer," is a servant, and the employer is liable to third persons injured by the negligence of such a servant. Foster v. City of Chicago, 197 Ill. 267; Foster v. City of Chicago, 96 Ill. App. 8.

An independent contractor is said to be "a contractor pursuing an independent employment, and by the terms of his contract is free to exercise his own judgment and discretion as to the means and appliances that he may see proper to employ to do the work, exclusive of the control and direction in this respect of the party for whom the work is being done." Bjornson v. Saccone, 88 Ill. App. 9.

An independent contractor is one who undertakes to produce a given result without being in any way controlled as to the method by which he attains that result. Rosenbaum Bros. v. Devine, 271 Ill. 357.

INDEPENDENT COVENANT.

In Nelson v. Oren, 41 Ill. 18, it was said: "Where a covenant goes only to a part of the consideration on both sides, and a breach of such covenant may be paid for in damages, it is an independent covenant, and an action may be maintained for the breach without averring full performance." To the same effect is White v. Gillman, 43 Ill. 502; Prairie Farmer Co. v. Taylor et al., 69 Ill. 442; Rubens v. Hill, 213 Ill. 534; Johnson v. First National Bank of Morrison, 24 Ill. App. 356.

interference or control, to a competent and independent contractor the party authorizing the work is exempt from liability for injury resulting from the negli-

ance on his own part." Pollock Princ. Cont. 247, citing Lord Mansfield in Kingston v. Preston (1773), cited in Jones v. Backley, Dong. 689; Finch, Sel. Ca. 768.

INDEPENDENT OF ALL OTHER CAUSES.

By direct agency or proximately. Preferred, etc., Ass'n v. Jones, 60 Ill. App. 108.

INDEPENDENT ORDER.

"Where the items of administrators' or guardian's reports are based upon different transactions, the allowance or disallowance of the disconnected items are held to be independent orders of the court." Henning v. Eldridge, 146 Ill. 309, citing Curtis v. Brooks, 71 Ill. 127; Morgan v. Morgan, 83 Ill. 196; Millard v. Harris, 119 Ill. 191.

INDEPENDENT PROMISE.

"Promises are said to be independent when, although they be mutual, breach of any of them gives the other party a right of action without showing performance on his own part." Pollock Princ. Cont. 247, citing Lord Mansfield in Kingston v. Preston (1773), cited in Jones v. Backley, Dong. 689; Finch, Sel. Ca. 768 (where at p. 769 'independent' is misprinted 'dependent').

INDICTION.

The space of fifteen years. It was used in dating at Rome and in England. It began at the dismission of the Nicene council, A. D. 312. The first year was reckoned the first of the first indiction, and so on till fifteen years afterwards. The sixteenth year was the first year of the second indiction; the thirty-first year was the first year of the third indiction, etc.

INDICTMENT.

"I think it is clear that in old times the word 'indictment' included any

power to make the inquiry, and that when the charge made by them was reduced into writing, it was called an 'indictment.' And the reason of the thing is, that in all charges of felony the preliminary step is that 12 men should be sworn to make the inquiry. The ordinary case is that of grand jurors. They are sworn, and when they find some charge it is reduced into writing, and becomes a record of the court. In practice it is brought to them in the shape of a bill, and they write upon the back of it either, 'a true bill' or 'no bill;' but when it is thus in the shape of a record, it appears in the present tense, 'the jurors, etc., present,' as in the old times they would have come into court, and would have said, 'we present,' etc., and their presentment would afterwards have been put into writing. The coroner has authority to make an inquiry by the jury upon the dead body: but the accusation by such jury is equally an accusation as that of the grand jury, and the judgment upon the one is like a judgment upon the other" (per Blackburn, J., R. v. Ingham, 33 L. J. Q. B. 189; 5 B. &. S. 257). It was accordingly held in that case that "indictment" generally includes an inquisition, and does so within s. 6, 24 & 25 V. c. 100.

But "indictment" does not include an information, e. g., in the proviso to s. 7, 26 V. c. 29. R. v. Slator, 51 L. J. Q. B. 246; 8 Q. B. D. 267.

A written accusation of one or more persons of a crime or misdemeanor, preferred to and presented on oath by a grand jury, and by assent of twelve at least. Goddard v. State, 12 Conn. 452.

An indictment is a plain, brief, and certain narrative of an offence. Alderman v. People, 4 Mich. 424.

An indictment is a brief narrative of the offence charged; it must contain a certain description of the crime, and the facts necessary to constitute it. The People v. Gates, 13 Wend. (N. Y.) 317.

Indictment is an accusation made in a prescribed legal form, upon evidence, by a number of authorized persons, of some criminal offence against the peace of the charge made by an inquest which had | people, and when preferred in court, becomes a record for purposes of criminal prosecution. The People v. Restenblatt, 1 Abbott Pr. R. (N. Y.) 269.

An indictment is an accusation at the suit of the king (or state), by the oaths of twelve men (at the least, and not more than twenty-three), of the same county wherein the offence was committed, returned to inquire of all offences in general in the county, determinable by the court in which they are returned, and finding a bill brought before them to be true. Ex parte Slater, 72 Mo. 106.

"An indictment is an accusation at the suit of the King, by the oath of twelve men of the same county wherein the offense was committed, returned to inquire of all offenses in general in the county, determinable by the court into which they are returned and finding a bill brought before them to be true." Harrison, J., in In re Grosbois, 109 Cal. 448, quoting 2 Hawkins Pleas of the Crown 287.

"The word indictment in this statute (providing that no person shall be held to answer on a second indictment for an offense of which he has been acquitted by a jury upon the facts and merits; but such acquittal may be pleaded in bar of any subsequent prosecution for the same offense, notwithstanding any defect in the form or substance of the indictment on which he was acquitted) includes complaint." Commonwealth v. Goulet, 160 Mass. 276, citing Commonwealth v. Gillon, 2 Allen, 502.

INDIFFERENT.

What is meant by a person standing indifferent? Manifestly, that the mind is in a state of neutrality, as respects the person, and the matter to be tried; that there exists no bias, for or against either party, in the mind of the juror, calculated to operate upon him; that he comes to the trial with a mind uncommitted, and prepared to weigh the evidence in impartial scales. People v. Vermilyea, 7 Cowen (N. Y.) 122.

"The statutes (23 Hen. 8, c. 5, §§ 1, 10, and 13 Eliz. c. 9, § 7) require the commissioners (of sewers) acting to be 'indifferent' persons, that is, persons who have no interest in the matter with

which they are dealing." Lord Coleridge, C. J., arguendo, in Reg. v. Commissioners of Sewers, 14 Q. B. D. 578.

INDIVIDUAL.

"What is meant * * by the two words 'individual banker' (in a statute forbidding any bank or 'individual banker' to advertise as a savings bank, etc.)? * * An individual is one entity, one distinct being, a single one, and when spoken of the human kind means one man or one woman. To individualize is to single out from the species. So that the rigid definition of the two words 'individual banker' is, one person banking alone." People v. Doty, 80 N. Y. 228.

INDIVIDUALLY.

The word individually means separately, and this again means singly. Meisser v. Thompson, 9 Ill. App. 370.

INDORSE.

Jurors Act.

Section 17 of the Jurors Act (J. & A. ¶6847), requiring the foreman of the grand jury to "indorse" on the indictment the words "a true bill," is complied with where the words are printed thereon, or written by some person other than the foreman, provided the foreman signs the indictment. People v. St. Clair, 244 Ill. 447.

The word "indorse" means a writing on the back. Ryan v. First, etc., Bank, 148 Ill. 354.

While the word "indorse" means a writing on the back, it can always be shown that a signature on the face of an instrument was placed there, not as a maker, but for the purpose of binding the party as indorser, only. Herring v. Woodhull, 29 Ill. 99.

The meaning of "indorse" is commonly understood to be different from that of "guaranty." In Chap. 98 of the Revised Statute, the word "indorsement" is used to express an act that imposes the well known statutory liability upon the in-

dorser, and which is very far short of the undertaking of a guarantor. This meaning of the contract of indorsement was recognized in Eberhart v. Page, 89 Ill. 550.

Where "indorse" has been construed to mean "guaranty," it has been in connection with other words, indicative of an intention to assume the latter liability, as in Glickauf v. Kaufman, 73 Ill. 378, and Tatum v. Bonner, 27 Miss. 760; Delamater v. Kearns, 35 Ill. App. 635.

INDORSED.

An averment in a declaration that a party to a negotiable instrument "indorsed" the note to plaintiff imports, by the word "indorsed," that such indorser made a complete indorsement by the delivery of the note. Higgins v. Bullock, 66 Ill. 39.

INDORSED ON THE INSTRUMENT.

Written on the back of it. Fountain v. Bookstaver, 141 Ill. 465.

INDORSEMENT.

Literally, indorsement means a writing, in dorse upon the back of the bill or note. But it is well established, that though such is its import, it may be made on the face of the bill, and numerous indorsements may be made on separate paper, called an allonge. Chit. on Bills, 227; Yarborough v. Bank of England, 16 East 12; Rex v. Bigg, 1 Strange 18; Story on Promissory Notes, sec. 121; Gibson v. Powell, 6 Howard (Miss.) 60. And any form is sufficient which manifests an intention to transfer the note. Morris v. Bird, 11 Mass. 436; Herring Impl., etc., et al. v. Woodhull, 29 Ill. 99; Farmers Trust Co. v. Schenuit, 83 Ill. App. 273, 274.

In its most general and literal signification an indorsement is an incidental or subsidiary writing upon the back of the paper or document to the contents of which it relates or pertains. It may consist merely of the name, commonly called an indorsement in blank, or it may be limited or specific; but under the law merchant its legal effect includes properly, first, a transfer of title to the instrument indorsed; and secondly, unless otherwise limited, an additional promise to pay the same. Kistner v. Peters, 223 Ill. 610.

An indorsement consists in writing the name of the holder on the back of the certificate, and such an indorsement, completed by delivery, is, under the statute, operative to effect a transfer of all the right and title of the original purchaser. Larson v. Glos, 235 Ill. 589; Fountain v. Bookstaver, 141 Ill. 465.

INDUCE.

The word "induce" used in an information is equivalent to the word "procure" used in the statute. People v. Van Bever, 248 Ill. 140; People v. Bennett, 185 Ill. App. 317.

INDUCEMENT.

"Inducement" has been defined as the statement of matter which is introductory to the principal subject of the declaration or plea, and which is necessary to explain or elucidate it. Such matter as is not introductory to, or necessary to elucidate the substance or gist of the declaration, plea, etc., or is collaterally applicable to it, is surplusage. Bouvier's Law Dictionary (Rawle's Ed.). And the same authority defines "surplusage" to be matter wholly foreign and impertinent to the cause. Consolidated Coal Co. of St. Louis v. Peers, 97 Ill. App. 194.

"The office of the inducement is to narrate the extrinsic circumstances which, coupled with the language published, affect its construction and render it actionable, when, standing alone and not thus explained, the language would appear not to concern the plaintiff, or, if concerning him, not to affect him injuriously." McLaughlin v. Fisher, 136 Ill. 117.

The inducement is that part of an indictment for libel not per se defamatory which alleges those extrinsic facts which are necessary to explain the meaning of the words used and to show them to be injurious in effect. Newell on Libel and Slander, 603; People v. Keithley, 158 Ill. App. 14.

INDUCING.

The words "inducing" and "persuading," as used in an information for pondering, are practically synonymous and charge only one offense. People v. De Joy, 198 Ill. App. 361.

INDUSTRIAL PURSUITS.

The expression "industrial pursuit" is broader than "trading" or "manufacturing." It includes both, and something more. It has been held that a statute authorizing corporations for "industrial pursuits" authorizes a corporation for carrying on the express business, and a corporation for carrying on a mercantile business for the sale of goods, mining supplies, etc. Fletcher Cyclopedia Corporations 131.

INELIGIBLE.

Means as well disqualification to hold an office, as disqualification to be elected to an office. State v. Murray, 28 Wis. 99.

INEVITABLE.

An "inevitable accident" will not comprise "anything arising from the acts or defaults of either of the contracting parties." This phrase does not apply to anything known when the deed or contract is executed (Jervis v. Tomkinson, 26 L. J. Ex. 41; 1 H. & N. 195; 4 W. R. 683); nor does it apply to anything which either party might have avoided, and it is immaterial upon which of them the burden lies of providing against it. Per Fry, J., Saner v. Bilton, 47 L. J. Ch. 270; 7 Ch. D. 815: approved in Manchester Bonding Warehouse Co. v. Carr, 49 L. J. C. P. 809; 5 C. P. D. 507. See Buckhurst, 51 L. J. P. D. & A. 10; 6 P. D. 152.

"An influx of brine is, probably, in a lease of salt mines, an "inevitable accident." MacS. 244, n. 1, citing Jervis v Tompkinson, sup.

Inevitable accident is now used as a phrase synonymous with "the act of God." Neal v. Saunderson, 2 Smedes & Marsh. (Miss.) 576.

Inevitable accidents are restricted to such as come from a force superior to all human agency, either in their production or resistance. L. C. & Lex. R. R. Co. v. Hedger, 9 Bush. (Ky.) 647.

Under the Roman Law.

"In the second place, the Roman law made no distinction between inevitable accident arising from what in our law is termed the 'act of God' and inevitable accident arising from other causes, but, on the contrary, afforded immunity to the carrier, without distinction, whenever the loss resulted 'casus fortuitus,' or, as it is also called, 'damnum fatale,' or 'vis major,' unforeseen and unavoidable accident." Nugent v. Smith (1876), 1 C. P. D. 423.

Distinguished from Act of God.

That may be an inevitable accident which no foresight or precaution of the carrier could prevent; but the phrase "act of God" denotes natural accidents that could not happen by the intervention of man, as storms, lightnings and tempests. Redpath v. Vaughan, 52 Barb. (N. Y.) 499.

INEVITABLE OR ABSOLUTELY UNAVOIDABLE.

Accidents are inevitable or absolutely unavoidable because effected or influenced by the uncontrollable operations of nature. Dreyer v. People, 188 Ill. 51.

INFAMOUS.

Our statute provides: "Every person convicted of the crime of murder, rape, kidnaping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy or other crime against nature, incest, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous." Bartholomew v. The People, 104 Ill. 607.

INFAMOUS CONDUCT.

For a medical man to publish in a popular form, directions to enable women to prevent conception (Allbutt v. Gen. Medical Council, 23 Q. B. D. 400; 37 W. R. 771), or to allow his name to be used as a "cover" for an unqualified person (Leeson v. Gen. Medical Council, Times, 23 Dec., 1889; 38 W. R. 303) may be regarded as "infamous conduct in a professional respect," within s. 29, 21 & 22 V. c. 90. In the latter case it was held that to state in the notice that the offender had acted so as to enable the other to charge "as if he were duly qualified," was sufficient, because in that connection, "duly qualified" had reference to a medical qualification.

INFAMOUS CRIME.

A crime which subjects the party to a disqualification to hold office, in case he is convicted of such crime, is an infamous crime. People v. Kipley, 171 Ill. 73.

Bribery at an election is an infamous crime within the meaning of section 4 of article 4 of the Constitution of 1870, providing that "no person who has been or hereafter shall be convicted of bribery, perjury or other infamous crime * * * shall be eligible to the General Assembly, or to any office of profit or trust in this state." Christie v. People, 206 Ill. 340.

INFAMOUS PERSONS.

Such as may be challenged as jurors propter delictum, and therefore shall never be admitted to give evidence to inform that jury with whom they were too scandalous to associate. McCafferty v. Guyer, 59 Penn. St. 116.

INFAMY.

Means that loss of character, or public disgrace which a convict incurs, and by which he is rendered incapable of being a witness or juror. Com. v. Shaver, 3 Watts & S. (Pa.) 342.

INFAMOUS PUNISHMENT.

Disqualification from holding office, if inflicted as a punishment for crime, is an infamous punishment. People v. Kipley, 171 Ill. 73.

INFANT.

"All persons must attain a certain age before they are admitted to full freedom of action and disposition of their property. This is but a necessary recognition of the actual conditions of man's life. The age of majority, however, has to be fixed at some point of time by positive law. By English law it is fixed at twenty-one years; and every one under that age is called an infant (Co. Litt. 171b)." Pollock, Princ. Cont. 49.

"An infant is not absolutely incapable of binding himself, but is, generally speaking, incapable of absolutely binding himself by contract (stated in this form by Hayes J., 14 Ir. C. L. R. at p. 356). His acts and contracts are voidable at his option, subject to certain statutory and other exceptions. By the common law a contract made by an infant is generally voidable at the infant's option, such option to be exercised either before his attaining his majority or within a reasonable time afterwards. Where the objection is incident to an interest (or at all events to a beneficial interest) in property, it cannot be avoided while that interest is retained." Pollock, Princ. Cont. 51.

"When an infant has induced persons to deal with him by falsely representing himself as of full age, he incurs an obligation in equity, which, however, in the case of a contract is not an obligation to perform the contract, and must be carefully distinguished from it (Acc. Bartlett v. Wells (1862), 1 B. & S. 836, 31 L. J. Q. B. 57). Indeed it is not a contractual obligation at all. It is limited

, and the principle on which it is founded is often expressed in the form: 'An infant shall not take advantage of his own fraud.'" Pollock, Princ. Cont. 73.

INFANTICIDE.

The murder of a recently born infant for the purpose of concealing its birth. Campbell v. People, 159 Ill. 23.

INFANTILE LEUCORRHEA.
See Vaginitis.

INFECTIONS.

"There is doubtless a technical distinction between the two (the terms contagious and infectious) in the fact that a contagious disease is communicable by contact, or by bodily exhalation, while an infectious disease presupposes a cause acting by hidden influences, like the miasma of prison ships or marshes, etc." Grayson v. Lynch, 163 U. S. 468; Wirth v. State, 63 Wis. 55.

INFER.

To infer is derived from the Latin inferre, compounded of "in" from, and "ferre" to carry or bring, and its strict meaning is to bring a result or conclusion from something back of it, that is, from some evidence or data from which it may be logically deduced. But to presume is from the Latin praesumere, consisting of "prae," before, and "sumere," to take, and signifies to take or assume a matter beforehand, without proof—to take for granted. Morford v. Peck, 46 Conn. 385.

INFERENCE.

An inference is something inferred from precedent matter; separated from which, it is a mere absurdity in language. There may be precedent matter and no inference; but there can be no inference without precedent matter; they must stand together and cannot be separated. Chambers v. Hunt, 3 Harr. (N. J.) 354.

Inference is a deduction or conclusion from facts or propositions known to be true. Gates v. Hughes, 44 Wis. 336.

"An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction of law to that effect." Wallace v. Sisson, 114 Cal. 46, quoting Code Civ. Frac. § 1958.

INFERIOR COURTS.

All courts from which an appeal lies are inferior courts in relation to the appellate court before which their judgment may be carried; but, they are not,

therefore, inferior courts in the technical sense of those words. They apply to courts of a special and limited jurisdiction, which are erected on such principles that their judgments, taken alone, are entirely disregarded, and the proceedings must show their jurisdiction. Kempe's Lessee v. Kennedy, 5 Cranch (U. S.) 185.

INFERIOR COURTS OF RECORD.

The expression "inferior courts of record," used in section 5 of the Fees and Salaries Act, designates courts of record inferior to the circuit court and the superior court of Cook county. Wolf v. Hope, 210 Ill. 65.

A city court is an "inferior court of record" within the meaning of section 5 of the Fees and Salaries Act. Wolf v. Hope, 210 Ill. 65.

INFERIOR LOCAL COURTS.

The City Court of the city of Alton is an "inferior local court" within the meaning of section 1 of article 5 of the Constitution of 1848, providing that such courts may be established by the General Assembly in addition to the other courts named in the section. Reid v. Morton, 119 Ill. 127.

INFERRED MALICE.

The meaning of malice being inferred by the law is that it does not signify what was the motive of the person publishing the libel, or whether he intended it to have a libellous meaning or not. Per Lord Esher, M. R., in Nevill v. Fine Arts, etc., Ins. Co., Ld. (1895), 2 Q. B. 156.

INFIDEL.

One who does not believe in the existence of a God who will reward or punish in this world, or that which is to come. Willes, 550. One who professes no religion that can bind his conscience to speak the truth. 1 Greenl. Ev. § 368.

This term has been very indefinitely applied. Under the name of "infidel,"

Lord Coke comprises Jews and heathens (2 Inst. 506; 3 Inst. 165), and Hawkins includes among infidels such as do not believe either in the Old or New Testament. Hawk. P. C. bk. 2, c. 46, § 148.

One who does not believe the Bible, or that Jesus Christ was the true Messiah, "the Christ of God." Hale v. Everett, 53 N. H. 55.

The "infidel" is one who does not recognize the inspiration or obligation of the Holy Scriptures, or the generally recognized features of the Christian religion. Gibson v. American Mut. Life Ins. Co., 37 N. Y. 584.

INFIRMITY.

"'Infirmity' (in a rule of a friendly society which provides for the relief of a member who shall meet with any infirmity which may render him an object deserving the assistance of the society),

* * means some permanent disease, accident, or anything of that kind, rendering the member an object deserving of the assistance of the society."

Kekewich, J., alone in In re Buck (1896), 2 Ch. 734.

INFLICT BODILY HARM.

To "inflict grievous bodily harm," s. 20, 24 & 25 V. c. 100, means "the direct causing of some grievous injury to the body itself with a weapon, as by a cut with a knife, or without a weapon, as by a blow with a fist or by pushing a person down." Poisoning, whether of the ordinary kind or by animal infection, is not within the phrase. "If a man by a grasp of the hand infects another with small pox, it is impossible to trace out in detail the connection between the act and the disease, and it would, I think, be an unnatural use of language to say that a man by such an act 'inflicted' small-pox on another. It would be wrong in interpreting an Act of Parliament to lay much stress upon etymology; but I may just observe that 'inflicting' is derived from infligo, to which, in Facciolati's Lexicon, three Italian and three Latin equivalents are given, all meaning 'to strike,'--viz., dare,

ferire, and percutere, in Italian, and infero, impingo, and percutio in Latin" (per Stephen, J., R. v. Clarence, 58 L. J. M. C. 18, 19; 22 Q. B. D. 23). And in accordance with the reasoning of Stephen. J., it was held (by a majority) in the case cited, that knowingly suffering from a venereal disease and yet having connection with, and imparting the disease to, one of the opposite sex who is ignorant that the embracer is so suffering, is not to "inflict grievous bodily harm" within the section; nor is it an "assault occasioning actual bodily harm" within s. 47 of the same statute: and whether the parties are married or not is immaterial for the purpose of this construction. But Hawkins, J., delivered a strong judgment against the conclusion at which the majority of the court arrived; and in the course of that judgment said that, in his opinion, "inflict," "cause," and "occasion," were used as synonymous terms in the sections (and their cognates) then under discussion. See Hegarty v. Shine, 4 L. R. Ir. 288.

Where a woman had been so terrified by her husband that she attempted to get out of the window but, when partially out, her daughter caught hold of her and was preventing her from falling, when the husband ordered the daughter to let go which she accordingly did, and in consequence the woman fell into the street and broke her leg, there it was held that the injury was "inflicted" by the husband within the section cited. R. v. Halliday, 6 Times Rep. 109; 34 S. J. 129.

INFORMED.

"It is claimed that to be 'asked' of his right (right of the accused to be informed that he was entitled to the aid of counsel, the record showing he was 'asked' by the court if he had secured counsel) is not equivalent to saying that he was 'informed' of his right. Obviously, the minute entry was not intended to be made in the way it stands; it is not likely that the court 'asked' defendant of his right to be represented. It is more probable that the fact was the court 'informed

him' of his right." People v. Miller, 137 Cal. 646.

INFORMALITY.

To quash an order for "informality" does not exclusively mean for something informal appearing on the face of the order; it may mean nothing more than that the decision to quash did not proceed upon the merits. R. v. Cottingham, 4 L. J. M. C. 65.

By informality is understood a deviation, in charging the necessary facts and circumstances constituting the offence, from the well approved forms of expression, and a substitution in lieu thereof of other terms, which nevertheless make the charge in as plain, intelligible and explicit language. State v. Gallimore, 2 Ired. Law (N. C.) 377.

INFORMATION.

As Knowledge.

The communication of material facts for the first time. Hall v. Rouse, 4 M. & W. 24.

"The word 'information' as used in the statute (prohibiting the disclosure of information by physicians), comprehends the knowledge which the physicians acquired in any way while attending the patient, whether by their own insight, or by the verbal statements from him, or from members of his household, or from nurses or strangers, given in aid of the physician in the performance of his duty.

* * Knowledge, however communicated, is information." Edington v. Mut. Life Ins. Co. of N. Y., 5 Hun (N. Y.) 8.

As a Complaint.

Section 76 of the School Act of 1872, relating to the recovery of fines imposed on school officers for malfeasance in office, uses the word "information" as meaning "complaint." Newton v. People, 72 Ill. 508.

Criminal.

A criminal information is an accusation or a complaint exhibited against a person for some criminal offense (below the grade of felony), which, from its enormity or dangerous tendency, the public good requires should be restrained or punished, and differs principally from an indictment in this, that an indictment is found upon the oath of twelve men and an information is only the allegation of the officer who exhibits it. It is a prosecution originating with an officer, but may originate with a private citizen, but its object is, not compensation to the informer (except in qui tam actions), but solely the public advantage. State v. Clinton, 67 Mo. 379.

Informations "are of two sorts; first, those which are partly at the suit of the king and partly at that of a subject; and secondly, such as are only in the name of the king." And the last "are of two kinds; first those which are truly and properly his own suits, and filed ex officio by his own officer, the Attorney-General; and secondly, those in which, though the King is the nominal prosecutor, yet it is at the relation of some private person or common informer. Goddard v. the State, 12 Conn. 452.

Criminal informations are analogous to declarations for the redress of a personal injury, except that the latter are at the suit of a subject for the satisfaction of a private wrong, and the former are in the name of the King, for the punishment of offences affecting the interests of the public. State v. Concord & Boscowen, 20 N. Hamp. 296.

INFORMATION IN THE NATURE OF QUO WARRANTO.

The substitute for the ancient writ of quo warranto, and when introduced was essentially a criminal method of prosecution to punish encroachments upon the prerogative of the crown. People v. Gartenstein, 248 Ill. 551.

The office of an information in the nature of quo warranto is simply to call on the defendant, in general terms, to show by what warrant or charter the privilege claimed is held and exercised, and not to tender any issue of fact. People v. Central, etc., Co., 232 Ill. 271.

INFORTIATUM.

the grade of felony), which, from its (Lat.) In civil law. The second part enormity or dangerous tendency, the pubof the Digest or Pandects of Justinian.

This part, which commences with the third title of the twenty-fourth book, and ends with the thirty-eighth book, was thus called because it was the middle part, which, it was said, was supported and fortified by the two others. Some have supposed that this name was given to it because it treats of successions, substitutions, and other important matters, and, being more used than the others, produced greater fees to the lawyers.

INFRINGEMENT.

What degree of resemblance is necessary to constitute an infringement is incapable of exact definition, as applicable to all cases. All that courts of justice can do, in that regard, is to say that no trader can adopt a trade-mark so resembling that of another trader, as that ordinary purchasers, buying with ordinary caution, are likely to be misled." McLean v. Fleming, 96 U.S. 245-251. But the court is not bound to interfere where ordinary attention will enable the purchaser to discriminate. Ball v. Siegel, 116 Ill. 137-146, and cases there cited. Heinz v. Lutz, 146 Pa. St. 592-609. It is not necessary, however, to show that the defendant acted with a fraudulent intention, nor that any one has been actually deceived. It is enough if the defendant has so simulated the complainant's trade-mark that its use is calculated to deceive and there is a probability that patrons will be so deceived. Eckhart v. Consolidated Milling Company, 72 Ill. App. 70-72; New England Awl & Needle Co. v. Marlborough Awl & Needle Co., 168 Mass. 154; Job Printers Union of Chicago v. Kinsley, 107 Ill. App. 658.

INFUSION.

In medical jurisprudence. A pharmaceutical operation, which consists in pouring a hot or cold fluid upon a substance whose medical properties it is desired to extract. The product of this operation.

Although "infusion" differs from "decoction," they are said to be ejusdem generis; and in the case of an indictment which charged the prisoner with giving a decoction, and the evidence was that he

had given an infusion, the difference was held to be immaterial. 3 Campb. 74.

INGRESS.

A grant of a right of "ingress, egress and regress," is a grant of a right of way from the locus a quo to the locus ad quem, and from the locus ad quem forth to any other spot to which the grantee may lawfully go, or back to the locus a quo. Somerset v. G. W. Ry., 46 L. T. 883.

INHABIT.

"The word 'inhabit' simply means to dwell in." Per Cave, J., in Atkinson v. Collard, 55 L. J. Q. B. 23; 16 Q. B. D. 254; 53 L. T. 670; 34 W. R. 75; 50 J. P. 23: See also Adams v. Ford, 55 L. J. Q. B. 13, Stribling v. Halse, 55 L. J. Q. B. 15.

INHABITANCY.

In the matter of Wrigley, 8 Wendell 134, the chancellor said: "'Inhabitancy' and 'residence' do not mean precisely the same thing as 'domicile,' when the latter term is applied to successions to personal estate, but they mean a fixed and permanent abode or dwelling place for the time being, as contra-distinguished from a more temporary locality of existence." Way v. Way, 64 Ill. 413.

"There is," says Blackburn, J., "no strict or definite rule for ascertaining what is inhabitance or residence. The words have nearly the same meaning. Sleeping once or twice in a place would not constitute inhabitance. There is no precise line to be drawn. It is always, if the inhabiting is bona fide, a question of more or less. The question is whether there has been such a degree of inhabitance as to be in substance and in common sense a residence. When a person has a country and a town house, it is a mere question of fact whether he has two or only one residence." Reg. v. Mayor of Exeter, Wescomb's case (1868), L. R. 4 Q. B. 110.

"A person may inhabit a place without sleeping there, or he may sleep there without inhabiting it. The fact that a person sleeps in a place is generally a very important ingredient in deciding whether he inhabits it, but it is not conclusive." Blackburn J., Reg. v. Mayor of Exeter, Dispitale's case (1868), L. R. 4 Q. B. 114.

Inhabitancy and residence do not mean precisely the same thing as domicile, when the latter term is applied to successions to personal estate, but they mean a fixed and permanent abode or dwelling place for the time being, as contradistinguished from a mere temporary locality of existence. In re Wrigley, 8 Wend. (N. Y.) 140.

INHABITANT.

The term inhabitant is derived from the Latin habito and signifies to live in, to dwell in; and is applied, exclusively, to one who lives in a place, and has there a fixed and legal settlement. It embraces locality of existence. It refers to the place of a person's actual residence and excludes the idea of occasional or temporary residence; and as used in the section referred to, the place where the elector dwells, at the time of his voting. The term is conceived to be entirely free from technicality, and has a known and universally accepted meaning; all agreeing in considering inhabitant as directly connected with habitation and abode. It is supposed, that a term of no technicality, so simple and expressive in itself, and so clear and definite in its character is susceptible of but one meaning. This residence, however, is to be bona fide, and not casual or temporary. The word inhabitant comprehends a single fact, locally of existence; that of a citizen, a combination of civil privileges, some of which may be enjoyed in any state of the Union. The word citizen may properly be construed a member of a political society; and may properly be absent for years, and cease to be an inhabitant of his territory, the right of citizenship may not thereby be forfeited, but may be resumed whenever he may choose to return. Spragins v. Houghton, 3 Ill. 396, 403.

Distinguished from Citizens.

The inhabitants, as distinguished from citizens, are strangers who are permitted to settle and stay in this country. Bound by their residence to the society, they are subject to the laws of the State, while they reside there, and they are bound to defend it while it grants them protection, though they do not participate in all the rights of citizens. Spragins v. Houghton, 3 Ill. 403.

As Electors.

Section 27 of article 2 of the Constitution of 1818, relating to the qualifications of electors, uses the word "inhabitant" with reference to the place where the elector dwells, at the time of voting. Spragins v. Houghton, 3 Ill. 396.

Section 27 of article 2 of the Constitution of 1818, does not, by the use of the word "inhabitant," in prescribing the qualifications of voters, require that such voter be a native or naturalized citizen of the United States at the time of the presentation and acceptation of his vote. Spragins v. Houghton, 3 Ill. 414.

As Synonymous with Resident.

Webster defines inhabitant to mean one who dwells or resides permanently in a place, as distinguished from a transient lodger, or visitor; as, an inhabitant of a house, a town, a city, county or state (Law); one who has a legal settlement in a town, city or parish; a permanent resident. We thus see that an inhabitant is synonymous with resident, the latter word being more generally used in this country, and probably the better understood. Helle v. Deerfield Township, 96 Ill. App. 643.

"Actual residence, that is, personal presence in a place, is one circumstance to determine the domicile, or the fact of being an inhabitant; but it is far from being conclusive. A seaman on a long voyage, and a soldier in actual service, may be respectively inhabitants of a place, though not personally present there for years. It depends, therefore, upon many other considerations, besides actual presence. When an old resident and inhabitant, having a domicile from his birth in a particular place, goes to an-

other place or country, the great question whether he has changed his domicile, or whether he has ceased to be an inhabitant of one place and become an inhabitant of another, will depend mainly upon the question, to be determined from all the circumstances, whether the new residence is temporary or permanent; whether it is occasional, for the purpose of a visit, or of accomplishing a temporary object; or whether it is for the purpose of continued residence and abode, until some new resolution be taken to remove. If the departure from one's fixed and settled abode is for a purpose in its nature temporary, whether it be business or pleasure, accompanied with an intent of returning and resuming the former place of abode as soon as such purpose is accomplished; in general, such a person continues to be an inhabitant at such place of abode, for all purposes of enjoying civil and political privileges and of being subject to civil duties." Sears v. Boston, 1 Met. 251, quoted by Buskirk, J., Culbertson v. Floyd County, 52 Ind. 368.

"One who has an actual, but merely temporary residence in a place, is not, in any proper sense, an 'inhabitant' of that place." State v. Casper, 36 N. J. Law, 368.

"An inhabitant of a township or ward is one who has his domicile there, his fixed habitation and home, from which he has no present intention of removing." State v. Casper (1873), 36 N. J. Law, 368.

"By the term, 'inhabitant' of a place, or country, we understand one who has his domicile, or fixed residence there, in opposition to one who is a mere sojourner or temporary resident in the place, or country." State v. Boyd, 31 Neb. 727.

Corporations.

According to Lord Coke "every corporation and body politicke residing in any county, riding, citie, or towne corporate, or having lands or tenements in any shire, riding, city, or town corporate, quae propriis manibus et sumptibus possident et habent, are said to be in habitants there within the purview of" the | as follows: "A perpetuity in lands to a

statute of Henry VIII (22 Hen. VIII, c. 5) concerning the repair of bridges. Fletcher Cyclopedia Corporations, 818.

INHALE.

A voluntary act; in another sense, anything breathed into the lungs without intention. Fidelity, etc., Co. v. Waterman, 59 Ill. App. 299.

INHALED.

The word "inhaled," when used in exceptions contained in insurance policies, has reference to a voluntary and intelligent act, as distinguished from an involuntary and unconscious act, and means "by an act of volition drawn into the system by inspiration." Fidelity, etc., Co. v. Waterman, 161 Ill. 636, 59 Ill. App. 299; Pickett v. Ins. Co., 144 Pa. St. 79; Metropolitan Acc. Assn. v. Froiland, 161 Ill. 30; Paul v. Travelers' Ins. Co., 112 N. Y. 478.

INHERENT QUALITIES OF THE PROPERTY.

"Inherent qualities of the property" mean something within, and not something without the property. If the property was destroyed or damaged from within or from qualities inherent in it, the warehouseman is exempt. If such destruction or damage comes from without, and through lack of reasonable care on the part of the warehouse company, without fault upon the part of the owner of the property, the former is liable. Sibley Warehouse & Storage Co. v. Durand & Kasper Co., 102 Ill. App. 410.

INHERIT.

"Inherit" held to mean succession by descent. East v. Twyford, 9 Hare, 729.

INHERITANCE.

Bouvier defines the term, "inheritance,"

man and his heirs; the right to succeed to the estate of a person who dies intestate. The term is applied to lands. The property which is inherited is called an in-The term, 'inheritance,' inheritance. cludes not only lands and tenements which have been acquired by descent; but every fee simple or fee tail which a person has acquired by purchase, may be said to be an inheritance, because the purchaser's heirs may inherit it." He also says, that, in the civil law, the term means "the succession to all the rights of the deceased. It is of two kinds: that which arises by testament, when the testator gives his property to a particular person; and that which arises by operation of law, which is called succession ab intestato." Inheritance has also been defined to be, "an estate which descends or may descend to the heir upon the death of the ancestor. Estates of freehold are estates of inheritance absolute or limited." 2 Blackstone's Com. 104, 120; 10 Am. & Eng. Ency. of Law, p. 777. The word "inheritance," in its usual legal acceptation, applies to lands descended. In its popular acceptation, it includes all the methods by which a child or relation takes property from another at his death, except by devise, and includes as well succession as descent. Horner v. Webster, 33 N. J. L. 413. "Succession," in the civil law, denotes the transmission of the rights and obligations of a deceased person to his heir or heirs. The word "succession" is often used synonymously with the word, "descent." Descent is hereditary succession to an estate in realty. "Descent" usually applies to the devolution of real estate. The word, "inheritance," is also often used synonymously with "descent," and refers to the devolution of real property. In its popular acceptation, however, the word, "inheritance," includes the devolution of both real and personal property, and is co-extensive in meaning with the word "succession." 24 Am. & Eng. Ency. of Law. p. 345. Succession in the civil law includes immovable as well as movable es-Adams v. Akerlund, 168 Ill. 639, tates. 640.

Among the civilians, by inheritance is

understood the succession to all the rights of the deceased. Swanson v. Swanson, 2 Swan (Tenn.) 457.

"This word (inheritance) is not only intended where a man hath lands or tenements by descent of inheritage, but also everie fee simple or taile which a man hath by his purchase may be said an inheritance, because his heires may inherit him." Litt. s. 9; Vth. Co. Litt. 16 a, 383 b.

Will.

Where a testator provided in his will that his wife should have the right to remain on and derive her support from his farm during her life, and at the majority of the youngest child and at her death that the farm be sold and the proceeds divided among seven named children, and further provided that if any of them died "before inheriting his, her or their inheritance," that the fund should be divided among the survivors, the word "inheritance" cannot be given its strict technical meaning, and must be construed as meaning the distributive share of each arising from the sale of the farm. Ridgeway v. Underwood, 67 Ill. 426.

A devise of an "inheritance," apart from the Wills Act, carries the fee (2 Jarm. 283). So too of an appointment by will of "trustees of inheritance, for the execution hereof," for that phrase is equivalent to "trustees of my inheritance" or "trustees to inherit my estate for the execution of this my will." 2 Jarm. 394, citing Trent v. Hanning, 1 B. & P. N. R. 116; 10 Ves. 495; 7 East, 97. See Lewin, 215.

INHERITANCE TAX.

An inheritance tax is a tax upon the right of succession and is not a tax upon the property itself. Kochersperger v. Drake, 167 Ill. 122; Estate of Merrifield v. People, 212 Ill. 400; National Safe Deposit Co. v. Stead, 250 Ill. 597; North Trust Co. v. Buck & Rayner, 263 Ill. 229; People v. Schaefer, 266 Ill. 341; People v. Richardson, 269 Ill. 276; People v. Griffith, 245 Ill. 536; In re Estate of Graves, 242 Ill. 212. This doctrine has been uniformly adhered to in this State

and appears to be the general rule elsewhere. Mack's Estate, 46 Colo. 79; Kennedy's Estate, 157 Cal. 517; Booth's Exrs. v. Commonwealth, 130 Ky. 88; State v. Hamlin, 86 Me. 495; Swift's Estate, 137 N. Y. 77; Finnen's Estate, 196 Pa. St. 72; Knox v. Emerson, 123 Tenn. 409; Beals v. State, 139 Wis. 544; Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283.

A tax in the nature of an impost tax, or tax upon the right of succession, to be imposed upon the several amounts of the decedent's estate to which the successors thereto are respectively entitled; a charge against each share or interest according to its value and against the person entitled thereto. People v. Union, etc., Co., 255 Ill. 179.

An inheritance tax is not a tax upon the property but is a condition which the State imposes upon the right or privilege of succeeding to the ownership of the property, and that portion of the estate which under the Inheritance Tax Law vests in the State accrues at the same time the estate vests, immediately upon the death of the decedent, and all questions concerning it must be determined as of the date of the decedent's death. The People v. Richardson, 269 Ill. 276.

INHERITOR.

This word may be used in the sense merely of "taker." Per Knight-Bruce, L. J., Boys v. Bradley, 22 L. J. Ch. 621; 10 Hare, 389; 4 D. M. & G. 58.

INITIALS.

There is no presumption of sex from use of initials. People v. Martin, 180 Ill. App. 578.

The middle initial is no part of a name, and it will be presumed, after many years, in absence of evidence to contrary, that a person who attested a will, signing his first name with an initial for middle name, was the same person who testified, signing by initials of first and middle names, where the first initial is the first letter of the given name in the attestation, although the middle initial,

when testifying, was different. Slick v. Brooks, 253 Ill. 58.

In absence of contrary proof, it will be presumed on appeal from a confirmation judgment that a commissioner appointed under the name of "Frank Bettie," was the same person who signed the estimate as "Frank W. Beattie," as the middle initial is no part of the name, and the surnames are idem sonans. Gross v. Village of Grossdale, 177 Ill. 248.

INJUNCTION.

A judicial process by which a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. Wangelin v. Goe, 50 Ill. 463.

"The only function of an injunction is to stay threatened action, and suspend the conflicting claims of right of the respective parties where they then are, until they can be properly adjudicated." Lake Shore, etc., R. Co. v. Taylor, 134 Ill. 603.

INJUNCTION, VIOLATION OF.

"To do a wholly ineffectual act, though forbidden by an injunction, would hardly be deemed a violation of it. Hence the act must be not only in defiance of the restraint, but must deprive the other party of some substantial right or affect some substantial interest." People v. Diedrich, 141 Ill. 642, citing Butler v. Niles, 7 Robt. 336; 16 Alb. Pr. 14; High, Injunct. § 1420.

INJURE.

"An intent to 'injure,' in strictness, means more than an intent to do harm. It connotes an intent to do wrongful harm." Per Bowen, L. J., Mogul Co. v. McGregor, 58 L. J. Q. B. 479; 23 Q. B. D. 598.

INJURED.

"Contracting a disease is being "injured" within the meaning of § 8, Ch. 397, L. 1903, providing pension for families of

policemen who should die as result of injury received in line of duty." State ex rel. McManus v. Trustees of Policemen's Pension Fund, 138 Wis. 133.

INJURIA.

By injuria is meant a tortious act: it need not be willful and malicious, for, though it be accidental, if it be tortious, an action will lie. Willes, Ch. J., in Winsmore v. Greenbank, Willes' R. 581; Wright v. C. & N. W. R. R. Co., 7 Ill. App.

INJURIOUS TO HEALTH.

"An offensive smell which makes sick people worse must, more or less, interfere with the health of robust people;" and is therefore "injurious to health" gen-Per Stephen, J., Malton Loc. erally. Board v. Malton Manure Co., 49 L. J. M. C. 93; 4 Ex. D. 302.

INJURIOUSLY AFFECTED.

"Injuriously affected by the execution of the works," s. 68, Lands C. C. Act, 1845;—The complex meaning of this phrase has, probably, never been more clearly explained than by Bramwell, B., in McCarthy v. Metrop. Bd. of Works (42 L. J. C. P. 93, 94; L. R. 8 C. P. 208, 209), as follows:

- 1. The word "injuriously," does not mean "wrongfully" affected. What is done is rightful under the powers of the Act. It means "hurtfully" or "damnously" affected. As where we say of a man that he fell and injured his leg, we do not mean that his leg was wronged, but that it was hurt. We mean he fell, and his leg was injuriously (that is to say), hurtfully affected. At the same time I am clearly of opinion that to entitle the parties interested to compensation, the injury or hurt must be such as could not lawfully be inflicted except by the powers of the Act.
- 2. "The words of the section shew this: The lands must be 'injuriously affected by reason of the exercise, as regards such lands, of the powers of the Act.' The act.

one which would be wrongful but for the Statute.

"In accordance with the first branch of this definition it is settled that no injury can be embraced in this phrase unless it would have been an actionable wrong but for the Act authorizing it (Rickett v. Metrop. Ry., L. R. 2 H. L. 175; 36 L. J. Q. B. 205; 15 W. R. 937; 16 L. T. 542; McCarthy v. Metrop. Bd. of Works, L. R. 7 H. L. 243; 43 L. J. C. P. 385; 23 W. R. 115; 31 L. T. 182). But in Re Stockport Ry. (33 L. J. Q. B. 251; 10 L. T. 426), it was held, as an exception to this rule, that non-actionable nuisances might be the subject of compensation if done on land that had, by the nuisance maker, been compulsorily acquired from the person complaining and whose other land was affected by such nuisances. After a long litigation the ruling in the Stockport Ry. Case has been upheld by the H. L. Cowper-Essex v. Acton, 14 App. Ca. 153; 58 L. J. Q. B. 594.

"In accordance with the second branch of the definition, the injury must be done whilst the powers of the Act are being exercised, as distinguished from the authorized user of the thing which the Act authorizes. Therefore, e. g., though damages may be recovered against a railway company for injury caused by vibration, smoke and noise caused by their trains during the construction of their line, because such damage is caused by reason of the exercise of their powers; yet they are not liable for such damages occasioned by their trains after their line is completed, because then they are only using the thing that their Act has au-Brand v. Hammersmith Ry., thorized. Hammersmith Ry. v. Brand, L. R. 2 Q. B. 223; L. R. 4 H. L. 171; 36 L. J. Q. B. 139; 38 Ib. 265; 16 L. T. 101; 21 Ib. 238; 15 W. R. 437; 18 Ib. 12.

"The following are examples of how land may be 'injuriously affected' so as to give right to compensation under the sections: Narrowing (Beckett v. Mid. Ry., 37 L. J. C. P. 11; L. R. 3 C. P. 82; 17 L. T. 499; 16 W. R. 221), or obstructing a highway which is the proximate access to the land in question (Caledonian therefore, injuriously affecting must be | Ry. v. Walker, 7 App. Ca. 259; 30 W.

R. 569; in which case Selborne, L. C., questioned whether a mere change of gradient would carry compensation, and R. v. Eastern Counties Ry., 2 Q. B. 347; 11 L. J. Q. B. 66; 1 G. & D. 589; 2 Rail. Ca. 736); interference with a right of way, though only of a temporary nature (Ford v. Metrop. Ry., 55 L. J. Q. B. 296; 17 Q. B. D. 12; 54 L. T. 718; 34 W. R. 426; 50 J. P. 661); darkening ancient lights (Eagle v. Charing Cross Ry., 36 L. J. C. P. 297; L. R. 2 C. P. 638; 15 W. R. 1016; 16 L. T. 593); so of modern lights when ancient ones are darkened with them (Gower's-Walk Schools v. Lond. Tilbury & Southend Ry., 24 Q. B. D. 326; 6 Times Rep. 120); obstructing access to a water frontage (McCarthy v. Metrop. Bd. of Works, sup.: Buccleuch v. Metrop. Bd. of Works, 41 L. J. Ex. 137; L. R. 5 H. L. 418; 27 L. T. 1: Lyon v. Fishmongers' Co., 46 L. J. Ch. 68; 1 App. Ca. 662; 25 W. R. 165: North Shore Ry. v. Pion, 59 L. J. P. C. 251. Falls v. Belfast Ry., 12 Ir. L. R. 233); inundation caused by raising the level of a stream (R. v. North Mid. Ry., 2 Rail. Ca. 1); damage caused by insufficient drainage or protection of a Railway. R. v. North Union Ry., 1 Rail. Ca. 729.

"But land is not "injuriously affected" in the following cases: diversion of traffic by interference with a highway, and not being the immediate access to the land in question (Rickett v. Metrop. Ry., sup.), or which highway is an access to a ferry (Hopkins v. G. N. Ry., 46 L. J. Q. B. 265; 2 Q. B. D. 224; 36 L. T. 898); level Crossing. Caledonian Ry. v. Ogilvy, 2 Macq. 229.

"In the case of a proprietor from whom nothing has been taken by the promoters, it has been settled by a series of decisions in this House, that, although his land in the vicinity will necessarily be injured by the use of their works, yet it is not thereby 'injuriously affected' within the meaning of 'an Act providing that compensation shall be paid in respect of land 'injuriously affected.'" Per Lord Watson in Cowper Essex v. Action Local Board, 14 App. Cas. 153.

INJURY.

Detriment; hurt; harm; damage. Gillman v. Chicago Rys. Co., 268 Ill. 309.

An injury is a wrong inflicted on one person by another, by nonfeasance, misfeasance or malfeasance, and when there is no wrong there is not, in law, any injury. Bouvier's Law Dictionary. Hence the phrase damnum absque injuria. Chicago Union Traction Co. v. Browdy, 108 Ill. App. 181.

"An injury, legally speaking, consists of a wrong done to a person, or in other words, a violation of his right." Carstesen v. Stratford, 67 Conn. 437, quoting Parker v. Griswold, 17 Conn. 288.

INJURY TO REAL PROPERTY.

See also Loss of Property.

By clause 2, sec. 16, ch. 79, R. S., that a justice has jurisdiction "in actions for damages for injury to real property or for taking, detaining or injuring personal property." The expression here used, "injury to real property," is about as comprehensive as could well be devised, and would seem to embrace all injuries, whether direct or consequential. Lachman v. Deisch, 71 Ill. 59; C. & A. R. R. Co. v. Calkins, 17 Ill. App. 56.

INJURY TO THE PUBLIC.

The expression "injury to the public," within the meaning of the rule that a public nuisance may also be a private nuisance where the property of an injured in a manner different from the "injury to the public," means such an injury as excludes or hinders all alike in the enjoyment of a common right. Hoyt v. McLaughlin, 250 Ill. 447.

INLAND BILL OF EXCHANGE.

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Sublette Exchange Bank v. Fitzgerald, 168 Ill. App. 243.

A bank check is an inland bill of ex-

change. Robertson v. Flower, 136 Ill. App. 321.

INMATE.

A person who lodges or dwells in the same house with another, occupying different rooms, but using the same door for passing in and out of the house. Cowell. Webster. Jacob.

The word "inmate" as used in section 57a-1 of the Illinois Criminal Code [Callaghan's 1916 St. Supp. ¶ 3591 (1)] refers only to a woman who is in a house of ill-fame for the purpose of plying the business of fornication. People v. Brown, 209 Ill. App. 627; People v. Rice, 277 Ill. 521.

INN.

Kent, in defining an inn, says: "It must be a house kept open publicly for the lodging and entertainment of travelers in general, for a reasonable consideration. If a person lets lodgings only, and upon a previous contract with every person who comes, and does not afford entertainment for the public at large, indiscriminately, it is not a common inn." 2 Kent Com. 595; Pullman Palace Car Co. v. Smith, 73 Ill. 362.

A Pullman car is not an inn, within the meaning of the rule making the keeper of an inn an insurer of the safety of the property of a guest. Pullman, etc., Co. v. Smith, 73 Ill. 363.

A steamer carrying passengers upon the water and furnishing them with rooms and entertainment is for all practical purposes a floating inn. St. George v. Hamburg-American Line, 198 Ill. App. 96.

An inn or hostel may be defined to be a house in which travelers, passengers, wayfaring men, and other such like casual guests are accommodated with victuals and lodgings and whatever they reasonably desire, for themselves and their horses, at a reasonable price, while on their way (V. R. v. Luellin, 12 Mod. 445: Thompson v. Lacy, 3 B. & Ald. 283. 1 Burn's Jus., Alehouse, 30 Ed. 64). A refreshment-bar, though part of

a duly licensed premises, is not an inn (R. v. Rymer, 46 L. J. M. C. 108; 2 Q. B. D. 136: Strauss v. County Hotel Co., 53 L. J. Q. B. 25; 12 Q. B. D. 27); nor is an ordinary coffee-house (Doe v. Laming, 4 Camp. 77); nor is a boarding-house (Dansey v. Richardson, 3 E. & B. 144): but a London coffee-house where beds as well as provisions are provided would seem to be an inn (Thompson v. Lacy, sup.). See 1 Sm. L. C. 142; Add. C. 297, 298.

INNER COURT.

A court entirely surrounded by a tenement house. Municipal Code of Chicago, § 605; Kristan v. Nepil, 150 Ill. App. 295.

INNKEEPER.

The Pullman Car Company is not an innkeeper, within the meaning of the rule making an innkeeper an insurer for the safety of the property of a guest. Pullman, etc., Co. v. Smith, 73 Ill. 363.

He must be a person keeping a house publicly open for the lodging and entertainment of persons in general, for a reasonable consideration. If a person lets lodgings only and upon a previous contract with every person who comes, and does not offer entertainment for the public at large, indiscriminately, he is not the keeper of a common inn. MacNeil's Ill. Evidence 706.

A person who makes it his business to entertain travelers and passengers, and provide lodging and necessaries for them, their horses and attendants. Carter v. Hobbs, 12 Mich. 56.

An innkeeper is one who holds himself out to the public as engaged in the business of keeping a house for the lodging and entertainment of travelers and passengers, their horses and attendants for reasonable compensation. Howth v. Franklin, 20 Tex. 801.

The common law duty of an innkeeper to keep a guest attaches only so long as the guest remains a traveler. "The principle on which this matter turns is laid down by Lord Chief Justice Holt in Rex

v. Luellin ([1700] 12 Mod. 445), and these are the words of the report and the whole of the report: 'The defendant was master of the Bell Inn, in Bristol. He was indicted for not receiving one taken ill with the small-pox; and it was quashed, for not saying he was a traveler.' That decision is cited and referred to in Reg. v. Rymer (2 Q. B. D. 136), where Kelly, C. B., says: 'The second question is, whether the prosecutor was a traveler. I need hardly cite authorities to shew that it is essential to such a prosecution that the prosecutor should be a traveler. If any be wanted—then he refers to the case of Rex v. Luellin Then Denman J. says: (supra). principles laid down in Burgess v. Clements ([1815] 4 M. & S. 306) shew that the object of the law upon the subject of an inkeeper's liability is merely to secure that travelers shall not, while upon their journeys, be deprived of necessary food and lodging.' That obviously is the principle on which the liability rests, and it is clear, I think, that the obligation exists only so long as the person is a traveler, and exists towards him only in so far as he is a traveler." Lamond v. Richard, [1897] 1 Q. B. 543.

INNOCENT PURCHASER.

But the doctrine is, that an innocent purchaser is one who has the legal title to the property, and has paid therefor a valuable consideration without notice of defects in the title. Bruschke v. Wright, 166 Ill. 191; International Packing Co. v. Cichowicz, 114 App. 126.

INNS OF CHANCERY.

So called because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the court of chancery. There are nine of them,—Clement's, Clifford's and Lyon's Inn; Furnival's, Thavies', and Symond's Inn; New Inn; and Barnard's and Staples' Inn. These were formerly preparatory colleges for students, and many entered them before they were admitted into the

inns of court. They consist chiefly of solicitors, and possess corporate property, hall, chambers, etc., but perform no public functions like the inns of court. Wharton.

INNS OF COURT.

The name given to the colleges of the English professors and students of the common law.

The four principal inns of court are the Inner Temple and Middle Temple (formerly belonging to the Knights Templar), Lincoln's Inn, and Gray's Inn (anciently belonging to the earls of Lincoln and Gray). The other inns are the two Sergeants' Inns.

INNUENDO.

An innuendo is properly used to point the meaning of the words alleged to have been spoken, in view of the occasion and circumstances, whether appearing in the words themselves, or extraneous prefatory matters alleged in the declaration. It is explanatory of the subject matter sufficiently already stated, and it can not extend the natural meaning of the words unless there is something averred in the prefatory part of the declaration for it to explain, or to which it may properly extend them. McLaughlin v. Fisher, 136 Ill. 116; People v. Keithley, 158 Ill. App. 14, 15.

INOFFICIOUS TESTAMENT.

"Where the will is unreasonable in its provisions, and inconsistent with the duties of the testator with reference to his property and family, or what the civilians an inofficious testament. denominate this, of itself, will impose upon those claiming under the instrument the necessity of giving some reasonable explanation of the unnatural character of the will, or, at least, of showing that its character is not the offspring of mental defect, obliquity or perversion." 1 Redfield on Wills, 516. In Patterson v. Patterson, 6 Serg. & Rawle 55, the question being as to the validity of a will, Chief Justice

Gibson said: "Where a will is impeached for imbecility of mind of the testator, together with fraudulent practices by the devisees, the intrinsic evidence of the will itself, arising from the unreasonableness or injustice of its provisions, taking into view the state of the testator's property, family, and the claims of particular individuals, is competent and proper for the consideration of the jury." So, in Clark v. Fisher, 1 Paige 171, the court, upon the authority of the case last cited, held that, in forming an opinion of the state of the testator's mind, it is proper to take into consideration the reasonableness of the will in reference to the amount of his property and situation of his relatives. Also, in Lynch v. Clements, 24 N. J. Eq. 451, it was held, that the inequality of the provisions of a will can not, of themselves, be adequate to prevent a court of equity from giving aid to carry out its provisions, but they may suffice to call for explanation from those in whose favor they are made. To similar effect, see Lamb v. Lamb, 105 Ind. 456; Bittner v. Bittner, 65 Penn. St. 347; Kevil v. Kevil, 2 Bush. 614; Kimball v. Cuddy, 117 Ill. 213; McCommon et al. v. McCommon et al., 151 Ill. 440, 441.

INOPPORTUNE.

"Inopportune" means "unseasonable in time," or "at the wrong time." Pennsylvania Co. ▼. Sloan, 125 Ill. 80.

INQUIRY.

"It does not appear to me that the word inquiry [in a statute providing for reference for inquiry and report] only includes an inquiry which the referee is to make with his own eyes. The word 'inquiry' in my opinion signifies an inquiry in which he is to take evidence and hold a judicial inquiry in the usual way in which such inquiries are held. The word inquiry is used because it is not meant to have the same result as a trial." Lord Esher, A. R., in Baroness Wenlock v. River Ice Co., 19 Q. B. D. 158.

A "Due Inquiry," s. 29, 21 & 22 V. c. 90, means to give its subject-matter a fair

hearing, Alibutt v. Gen. Medical Council, 23 Q. B. D. 400; 37 W. R. 771: Leeson v. Gen. Medical Council, Times, 23 Dec. 1889; 38 W. R. 303.

INQUIRY, WRIT OF.

A writ sued out by a plaintiff in a case where the defendant has let the proceedirgs go by default, and an interlocutory judgment has been given for damages generally, where the damages do not admit of calculation. It issues to the sheriff of the county in which the venue is laid, and commands him to inquire, by a jury of twelve men, concerning the amount of damages. The sheriff thereupon tries the cause in his sheriff's court, and some amount must always be returned to the court. But the return of the inquest merely informs the court, which may, if it choose, in all cases assess damages, and thereupon give final judgment. 2 Archb. Prac. (Waterman Ed.) 952; 3 Sharswood, Bl. Comm. 398; 3 Chit. St. 495, 497.

INSANE.

"Insane" is composed of two Latin words—in, not, and sanus, sound; it means "unsound." There is very little difference between an insane man, and a man of unsoundness of mind and memory. One of the definitions, which Webster gives of "insane," is: "exhibiting unsoundness of mind." Nicewander et al. v. Nicewander et al. 151 Ill. 165.

There seems to be a general consensus of opinion in the several courts of last resort in this country in which the question has arisen, that where a policy contains the condition that if the insured dies by his own hand, commits suicide, self-destruction, etc., "whether same or insane," and he does die by his own act, the insurer is not liable; that "the word insane' implies every degree of unsoundness of mind, and the liability of the insurer is not affected by the degree of in-The case of DeGogorza v. Insurance Co., 65 N. Y. 235, is generally cited as the leading case on the subject. See also Van Zant v. Insurance Co., 55 N. Y. 160. To the same effect are Spruill v.

Northwestern Mutual Life Ins. Co., 120 N. C. 141, citing numerous cases; Scarth v. Security Mutual Life Society, 75 Iowa 346; Tritschler v. Keystone Mutual Benefit Ass'n, 180 Pa. St. 205; Sargent v. Mutual Life Ins. Co., 189 Pa. St. 341; Keefer v. Modern Woodmen of America, 52 Atl. Rep. 164; Seitzinger v. Modern Woodmen, 204 Ill. 65, 66.

INSANE DELUSION.

In General.

An "insane delusion consists in the belief of facts which no rational person would have believed." Schneider v. Manning, 121 Ill. 376; Nicewander v. Nicewander, 151 Ill. 156. Again, in Scott v. Scott, 212 Ill. 597, it is said (p. 603): "An insane delusion is a belief in something impossible in the nature of things, or impossible under the circumstances surrounding the afflicted individual, and which refuses to yield either to evidence or reason." See also Bauchens v. Davis, 229 Ill. 561; Louby v. Key, 258 Ill. 558. In the Scott case it is also said: "Such a delusion does not exist unless it is one whose fallacy can be certainly demonstrated, for except such demonstration can be made it cannot be said that no rational person would entertain the belief." The court in the case of Owen v. Crumbaugh, 228 Ill. 380, quoted the above definitions with approval, and in this last case, and in People v. Hubert, 63 Am. St. Rep. (Calif.) 72, insane delusions were discussed at length. In Schneider v. Manning, supra, the court said (p. 382): "There may be, and doubtless are, cases where a person may be able to transact some business and yet be incapable of making a will on account of an insane delusion which has destroyed the mind on the subject relating to that particular act." To the same effect are American Bible Society v. Price, 115 Ill. 623; Huggins v. Drury, 192 Ill. 528, and Searle v. Galbraith, 73 Ill. 269.

A person may become prejudiced against some of his children or the natural objects of his bounty without a proper foundation and make unjust remarks about them, but it does not neces-

sarily follow that he has insane delusions or is devoid of testamentary capacity. "An eccentric man or a peculiar man is not disqualified from selling or disposing of his property by devise. If such was the case, many people might be deprived of that right, as but few men can be found who are not in some respects peculiar." Schneider v. Manning, supra, on page 386. Weakness of mind and insanity are of various degrees. "It is impossible to fix them in general, or to mark precisely the frontiers,-the almost imperceptible limits,-which separate insanity from sanity, or to number the degrees by which reason declines and falls into annihilation. It is necessary to consider such degrees so far, only, as they afford circumstances of evidence of legal competency or incompetency of mind." Shelford on Lunatics, 2 Law Lib. 37. The court, in Campbell v. Campbell, 130 Ill. 466, held that to constitute a sound and disposing mind it is not necessary that the mind should be wholly unbroken, unimpaired and unshattered by disease or otherwise, or that the testator be in possession of all his reasoning faculties; that a man may be competent to make a disposition of his property by will where it is simple and easy of comprehension and at the same time be incompetent to make a will which involves a very large estate and the consideration of the natural claims of a large number of rela-Clearly, by reason and authority, therefore, each case must be largely judged in connection with its special facts, circumstances and surroundings. Drum v. Capps, 240 Ill. 540, 541, 542. See also Carnahan v. Hamilton, 265 Ill. 521.

An insane delusion which will render one incapable of making a will is difficult to define with exact precision. In its simplest form, a delusion may be said to be a belief in a state or condition of things in the existence of which no rational person would believe. Schneider v. Manning, 121 Ill. 376. If, without evidence of any kind, a testator imagines or conceives something to exist which does not exist in fact, and which no rational person would, in the absence of evidence,

believe to exist, he is afflicted with an insane delusion. Middleditch v. Williams, 45 N. J. Eq. 726; 4 L. R. A. 738. A person who believes supposed facts which have no existence except in his perverted imagination and which are against all evidence and probability, and conducts himself, however logically, upon the assumption of their existence, is under an insane delusion. In re White, 212 N. Y. 406.

In analyzing the legal conception of an insane delusion it is necessary to keep in mind that the ultimate and essential thing to be established is that the testator had, at the time the will or instrument was executed, such an aberration as indicates an unsound or deranged condition of the mental faculties, as distinguished from the mere belief in the existence or nonexistence of certain supposed facts based upon some sort of evidence. A belief which results from a process of reasoning from evidence, however imperfect the process may be or illogical the conclusion, is not an insane delusion. If, under the facts shown, the court is able to see how a rational person might have believed all that the testator believed and still be in the possession of all his senses, an insane delusion is not established. Where a testator has some actual grounds for the belief which he has, though regarded by others as wholly insufficient, the mere misapprehension of the facts or unreasonable and extravagant conclusions drawn therefrom do not establish the existence of such a delusion as will invalidate his will. Stackhouse v. Horton, 15 N. J. Eq. 202; Martin v. Thayer, 37 W. Va. 38; Wait v. Westfall, 161 Ind. 648; 68 N. E. Rep. 271; Owen v. Crumbaugh, 228 Ill. 380; Snell v. Weldon, 243 Ill. 519, 520.

A false belief for which there is no reasonable foundation, and which would be incredible, under the given circumstances, to the same person if of sound mind, and concerning which the mind of the decedent was not open to permanent correction through evidence or argument. Walker v. Struthers, 273 Ill. 399.

Belief in Facts Having No Existence.

A person who imagines or conceives something to exist which does not exist

in fact, and which no rational person would, in the absence of evidence, believe to exist, or who believes supposed facts which have no existence except in his perverted imagination and which are against all evidence and probability, and conducts himself, however logically, upon the assumption of their existence, is under an insane delusion. Snell v. Weldon, 243 Ill. 519; Owen v. Crumbaugh, 228 Ill. 401.

Prejudice Against Relatives.

Unreasonable prejudice against relatives is not ordinarily a ground for invalidating a will; but a will may be set aside where the testator's aversion is the result of an insane delusion, and his conduct cannot be explained on any other ground. Schneider v. Manning, 121 Ill. 376; Nicewander v. Nicewander, 151 Ill. 156; Huggins v. Drury, 192 Ill. 536; Schmidt v. Schmidt, 201 Ill. 199.

Religious Beliefs.

The great majority of civilized human beings believe in the existence of a life beyond the grave. Based upon that belief, many religious creeds, differing widely, have been established. The fact that an individual holds any particular belief in regard to a future state of existence cannot, of itself, be evidence of an insane delusion or of monomania. insane delusion is a belief in something impossible in the nature of things, or impossible under the circumstances surrounding the afflicted individual, and which refuses to yield either to evidence or reason. Riggs v. A. H. M. Society, 35 Hun 656; State v. Lewis, 20 Nev. 333; Rush v. Megee, 36 Ind. 80. Such a delusion does not exist unless it is one whose fallacy can be certainly demonstrated, for except such demonstration can be made, it cannot be said that no rational person would entertain the belief. Consequently. no creed or religious belief, in so far as it pertains to an existence after death, can be regarded as a delusion, because there is no test by which it can be tried and its truth or falsity demonstrated. Gass v. Gass, 3 Humph. 278; Orchardson v. Cofield, 171 Ill. 14; Buchanan v. Pirie, 205



Pa. St. 123; Owen v. Crumbaugh, 228 Ill. 405; Scott v. Scott, 212 Ill. 603.

It follows, therefore, that a belief in Swedenborgianism and enthusiasm manifested in propagating that faith furnish no evidence of monomania, insane delusion or insanity. Scott v. Scott, 212 Ill. 603.

INSANE PERSON.

The sixth paragraph 'section 1 of the act relating to the construction of statutes specifically defines the words insane person, lunatic and spendthrift as follows: "The words "insane person' and 'lunatic' shall include every idiot, non compos, lunatic, insane or distracted person; and the word 'spendthrift' shall include every person who is liable to be put under guardianship on account of excessive drinking, gaming, idleness or debauchery." Rev. Stat. 1908, 2084; Bishop v. Welch, 149 Ill. App. 498.

INSANITY.

It is now generally conceded, that insanity is a disease of the brain, of that mass of matter through and by which that mysterious power, the mind acts. There, the mind is supposed to be enthroned, acting through separate and distinct organs. These organs may become diseased, one or more or all, and in the degree, or to the extent of such disease, is insanity measured. A disease of all the organs, causes total insanity, while of one or more, partial insanity only. There is, it seems, a general intellectual mania, and a partial intellectual mania, and a moral mania, which is also divided into general and partial. Hopps v. The People, 31 Ill. 390.

According to the great current of modern medical authorities insanity is a disease,—a disease of the mind,—the existence of which is a question of fact to be proved just as much as the possible existence of any other disease. Braun v. Craven, 175 Ill. 411, 412.

In Schneider v. Manning, 121 Ill. 383, the following instruction was passed upon: "The court instructs the jury, that insanity or unsoundness of mind, 88 Ill. App. 129.

within the meaning of the law in this case, is a disease of the brain, affecting the mind to such an extent as to destroy a man's capacity to attend to his ordinary business, or to know and understand the business he was engaged in when making a will."

INSIST.

A power to rescind a contract of sale, if purchaser shall make requisitions "and shall insist thereon," cannot be exercised until a fair attempt has been made to answer the requisitions (Greaves v. Wilson, 25 Bea. 290; 27 L. J. Ch. 546); in this connection "persist" is synonymous with "insist." Mawson v. Fletcher, 39 L. J. Ch. 583; L. R. 10 Eq. 212.

INSOLVENCY.

Insolvency has been defined as a general inability to answer, in the course of business, the liabilities existing and capable of being enforced. Best v. Fuller & Fuller Co., 185 Ill. 43, adopting the opinion of the Appellate Court in the same case reported in 85 Ill. App. 500; Fuller & Fuller v. Gaul, 85 Ill. App. 509. Another definition is that insolvency, as applied to a person, firm or corporation engaged in trade, is inability to pay debts as they fall due in the usual course of business. Atwater v. American Exchange Nat. Bank, 152 Ill. 605; Martin v. Hertz, 224 Ill. 88; Kellogg-Mackay-Cameron Co. v. Wm. Schmidt Baking Co., 101 Ill. App. 211; Woolverton v. G. H. Taylor Co., 43 Ill. App. 428.

It does not follow that a man is not insolvent because he may ultimately have a surplus upon the winding up of his affairs. On the other hand, if it can be reasonably found that he can, by proper use of his means, promptly recover from a merely temporary embarrassment caused by some unforeseen contingency, and carry on his business and meet his engagements in the ordinary course, he ought not to be deemed insolvent, because he temporarily failed to meet his obligations. Chicago Title & Trust Co. v. Household Guest Co., 88 III App. 129.

INSPECTION.

A critical examination. Armour v. Brazeau, 191 Ill. 127.

INSPECTION, TRIAL BY.

A mode of trial formerly in use in England, by which the judges of a court decided a point in dispute, upon the testimony of their own senses, without the intervention of a jury. This took place in cases where the fact upon which issue was taken must, from its nature, be evident to the court from ocular demonstration, or other irrefragable proof, and was adopted for the greater expedition of a cause. 3 Bl. Comm. 331. In this way questions whether a party were an infant or not, whether an injury was mayhem or not, etc., were determined; but this has been long out of use. 3 Steph. Comm. 582.

INSTALLMENT.

The strict meaning of the word "installment" is "a part of the whole." Cummings v. People, 213 Ill. 450.

An installment is one of the several part payments into which a single call may be divided. Cook on Corporations, section 104; Newmann v. Sexton, 156 Ill. App. 519.

INSTANCE COURT.

It is well known to those conversant with admiralty proceedings, that the court is two-fold: An instance court, which takes cognizance of contracts made, and injuries committed on the high seas; and the prize court, which has jurisdiction over prizes taken in time of war.

The instance court is governed by the civil law, the laws of Oleron, and the customs of the admiralty modified by statute. The prize court is to hear and determine according to the course of the admiralty, and the law of nations. Percival v. Hickey, 18 John. (N. Y.) 292.

INSTANT.

A writ dated in April but returnable on the third Monday in May "instant," shows, by the use of the word "instant," that the writ was really issued in May, and not in April. Hemmer v. Wolfer, 124 Ill. 439.

An indivisible point in time, which is not time, nor a part of time, to (or by) which, however, the parts of time are connected. Fulmerston v. Steward, Plowd. 110.

"Although an instant est unum indivisibile tempore quod non est tempus nec pars temporis, ad quod tamen partes temporis connectuntur, and that instans est finis unius temporis et principium alterius; yet in consideration of law there is a prioritie of time in an instant," so that a surviving joint tenant takes and is preferred before the devisee of his companion (Co. Litt. 185 b). See Termes de la Ley.

INSTANTER.

An order that the defendants plead "instanter" technically means within the judicial day then begun. 1 Bouvier Law Dic. 645. It is probably true that the term, as ordinarily used, is understood to mean instantly, immediately, or at once, so that upon such a rule, a default may follow the entry of the rule, and this, in effect, makes the rule unnecessary, for the default might as well be entered without it. Smith v. Little, 53 Ill. App. 160, 161.

"Instanter" is defined to mean "instantly; forthwith; without any delay or the allowance of any time." Burrell's Law Dict. In practice it is sometimes said to mean, "within twenty-four hours," and it is sometimes so defined by express rules of court; but the signification of the word which seems to us to be more in accordance with the practice which has uniformly prevailed in this State, is the one suggested in the note to King v. Johnson, 6 East 583, viz., "before the rising of court," when the act is to be done in court, or, "before the shutting of the office on the same night," when the act is to be done there. The same definition is adopted by Mr. Wharton in his Law Dictionary. He there lays down the rule that, when a party is ordered to plead instanter, he must plead the same day. Northrop v. McGee, 20 Ill. App. 110,

In its general signification and meaning the word instanter means at once, or immediately, and is so defined by lexicographers, but in the practice of the courts of law the word instanter is almost universally construed to mean during the day or session of the court at which the order is made. Where an order is entered by the court to file a plea or other pleading in a cause instanter it means before the usual time of the adjournment of that court at that session. Where an order made by the court does not refer to or relate to the pleadings in a cause of action in that court but relates to the performance of some act with the clerk of said court, and requires that act to be done instanter, the proper meaning and signification of the word instanter then is before the closing of the office of the clerk on the day in which the order is entered. Some courts have even gone so far as to hold that the word instanter in practice means within twenty-four hours. Rex v. Johnson, 6 East 583; Chaplin v. Chaplin, 2 Edw. Chancery (N. Y.) 328-9; Smith v. Little, 53 Ill. App. (3rd Dist.) 157; Hamilton v. People, 163 Ill. App. 544, 545.

The rule to plead "instanter" required a plea "before the rising of the court."

1 Rawle's Bouvier's Law Dict., title "Instanter;" A. W. Stevens Co. v. Kehr, 93

Ill. App. 512.

Immediately; presently. This term, it is said, means that the act to which it applies shall be done within twenty-four hours; but a doubt has been suggested by whom is the account of the hours to be kept, and whether the term "instanter," as applied to the subject matter, may not be more properly taken to mean "before the rising of the court," when the act is to be done in court, or "before the shutting of the office the same night," when the act is to be done there. 1 Taunt. 343; 6 East, 587, note (e); Tidd, Prac. (3d Ed.) 508, note; 3 Chit. Prac. 112. See 3 Burrows, 1809; Co. Litt. 157; Styles, Reg. 452.

INSTANTLY.

"'Instantly' does not, at least in a bill of sale, seem a more intense word than

'immediately.' Massey v. Sladen, 38 L. J. Ex. 34; L. R. 4 Ex. 13. Indeed in R. v. Brownlow (9 L. J. M. C. 15; 11 A. & E. 119; 3 P. & D. 52), it was said that 'Instantly' had no definite meaning; there a coroner's inquisition stated an explosion on a Thames steamer from the effects of which A. B. 'instantly died,' and the inquisition was quashed for not averring with sufficient distinctness the time of the death."

INSTEAD OF.

The words "instead of," "in lieu of," though naturally implying some, need not necessarily mean a total, substitution. Thus a gift by a codicil "instead of" one in the will, may be read "instead of so much of the gift in the will only as is incompatible with the codicil." 1 Jarm. 177, 178, citing Doe d. Murch v. Marchant, 13 L. J. C. P. 59; 6 M. & G. 813; 7 Sc. N. R. 644: Hill v. Walker, 4 K. & J. 168: Butler v. Greenwood, 22 Bea. 303: Barclay v. Maskelyne, 5 Jur. N. S. 12. See Ex p. Drew, W. N. (71) 184.

INSTIGATION OR REQUEST.

A mere consent in writing on the part of a cestui que trust (e.g., on the part of a married woman not really acting for herself in the matter, nor fully informed as to the state of the case) does not amount to an instigation or request within the meaning of the law which requires a cestui que trust at whose instigation or request a breach of trust has been committed to indemnify the trustees to the extent to which the cestui que trust has benefited from the breach of trust. Mara v. Browne [1895] 2 Ch. 92.

INSTITUTED.

A proceeding "instituted," means one commenced; therefore where, to a petition for restitution of conjugal rights, the answer charged adultery, there was no "action, suit or proceeding • • • instituted in consequence of adultery" within s. 14 & 15 V. c. 99. Blackborne v. Blackborne, 37 L. J. P. & M. 73; L. R. 1 P. & M. 563.

INSTITUTES.

Elements of jurisprudence; text books containing the principles of law made the foundation of legal studies.

The word was first used by the civilians to designate those books prepared for the student, and supposed to embrace the fundamental legal principles arranged in an orderly manner. Two books of Institutes were known to the civil lawyers of antiquity,—Gaius and Justinian.

Coke's Institutes.

Four volumes of commentaries upon various parts of the English law.

Sid Edward Coke wrote four volumes of "Institutes," as he is pleased to call them, though they have little of the institutional method to warrant such a title. The first volume is a very extensive commentary upon a little excellent treatise of tenures, compiled by Judge Littleton in the reign of Edw. IV. This comment is a rich mine of valuable common-law learning, collected and heaped together from the ancient reports and Year Books, but greatly defective in method. The second volume is a comment on many old acts of parliament, without any systematical order; the third, a more methodical treatise on the pleas of the crown; and the fourth, an account of the several species of courts. These Institutes are usually cited thus: The first volume as Co. Litt., or 1 Inst.; the second, third, and fourth as 2, 3, or 4 Inst., without any author's name. 1 Bl. Comm. 72.

Gains' Institutes.

A tractate upon the Roman law, ascribed to Caius or Gaius.

Of the personal history of this jurist nothing is known. Even the spelling of his name is matter of controversy, and he is known by no other title than Gaius, or Caius. He is believed to have lived in the reign of Marcus Aurelius. The history of Gaius' Institutes is remarkable. In 1816, Niebuhr was sent to Rome by the king of Prussia. On his way thither, he spent two days in the cathedral library of Verona, and at this time discovered these Institutes, which had been lost to the jurists of the middle ages. In 1817,

the Royal Academy of Berlin charged Goeschen, Bekker, and Hollweg with the duty of transcribing the discovered manuscript. In 1819, Goeschen gave the first completed edition, as far as the manuscript could be deciphered, to his fellow jurists. It created an unusual sensation, and became a fruitful source of comment. It formed a new era in the study of Roman law. It gave the modern jurist the signal advantage of studying the source of the Institutes of Justinian. It is believed by the best modern scholars that Gaius' was the first original tractate of the kind, not being compiled from former publications. The language of Gaius is clear, terse, and technical,-evidently written by a master of law, and a master of the Latin tongue. The Institutes were unquestionably practical. There is no attempt at criticism or philosophical discussion. The disciple of Sabinus is content to teach law as he finds it. Its arrangement is solid and logical, and Justinian follows it with an almost servile imitation.

The lawyers employed to compile it were Tribonian, Theophilus, and Dorotheus. The work was first published on the 21st of November in the year 533, and received the sanction of statute law by order of the emperor. They are divided into four books; each book is divided into titles, and each title into separate paragraphs or sections, preceded by an introductory part. The first part is called principium, because it is the commencement of the title; those which follow are numbered, and called "paragraphs." The work treats of the rights of persons, of things, and of actions. The first book treats of persons; the second, third, and the first five titles of the fourth book, of things; and the remainder of the fourth book, of actions. The method of citing the Institutes should be understood, and is now commonly by giving the number of the book, title, and section, thus: Inst. I. 2. 5,-thereby indicating book I. title 2, section 5. Where it is intended to indicate the first paragraph, or principium, thus: Inst. B. I. 2. pr. Frequently the citation is simply I. or J. I. 2. 5. A second mode of citation is thus: § 5, Inst. or I. I. 2,—meaning book I. title 2, paragraph 5. A third method of citation, and one in universal use with the older jurists, was by giving the name of the title and the first words of the paragraph refered to, thus: § senatusconsultum est I de jure nat. gen. et civil,—which means, as before, Inst. B. I. tit. 2, § 5. See 1 Colquhoun, § 61.

The best editions of Gaius are Goeschen's second edition, Berlin, 1824, in which the text was again collated by Bluhme, and the third edition of Goeschen, Berlin, 1842, edited by Lachman from a critical revision by Goeschen, which had been interrupted by his death. In France, Gaius attracted equal attention, and we have three editions and translations; Boulet, Paris, 1824; Domenget, 1843; and Pellat, 1844.

In 1859, Francesco Lisi, a learned Italian scholar, published, at Bologna, a new edition of the first book of Gaius, with an Italian translation, en regard. The edition is accompanied and enriched by many valuable notes, printed in both Latin and Italian. Perhaps this must be considered, so far as printed, the most complete edition of the old civilian that modern scholars have yet produced.

The reader who may wish to pursue his Gaiian studies should consult the list of some thirty-odd treatises and commentaries mentioned in Mackeldey's Lehrbuch des Rom. Rechts, p. 47, note (b), (13th Ed.) Wien, 1851; Huschke, Essay Zur Kritik und Interp. von Gaius Inst., Breslau, 1830; Haubold's Inst. Jur. Rom. Prev. Line pp. 151, 152, 505, 506, Lipsiae, 1826; Boecking's Gaius, Preface, pp. 11-18, Leps. 1845; Lisi's Gaius, Preface, pp. x. xi., Bologna, 1859. Institutionum Juris Civilis Commentarii Quattuor, translation with notes by Abdy and Walker, 1874 and translations by Muirhead (Edinb., 1880), Poste (Oxford, 1890), Tonkins and Lemon (London, 1869) and Mears (London, 1882).

Justinian's Institutes.

An abridgment of the Code and Digest, composed by order of that emperor, and under his guidance, with an intention to give a summary knowledge of the law to those persons not versed in it, and particularly to students. Inst. Proem. § 3.

The first printed edition of the Institutes is that of Schoyffer, fol. 1468. The last critical German edition is that of Schrader, Berlin, 1832. This work of Schrader is the most learned and most elaborate commentary on the text of Justinian in any language, and was intended to form a part of the Berlin Corpus Juris. but nothing further has been yet published. It is impossible in this brief article to name all the commentaries on these Institutes, which in all ages have commanded the study and admiration of jurists. More than one hundred and fifty years ago, one Homberg printed a tract De Multitudine nimia Commentatorum in Instutiones Juris. But we must refer the reader to the best recent French and English editions. Ortolan's Institutes de l'Empereur Justinien avec le texte, la traduction en regard, et les explications sous chaque paragraphe, Paris, 1857, 3 vols. 8vo, sixth edition. This is, by common consent of scholars, regarded as the best historical edition of the Institutes ever published. Du Caurroy's Institutes de Justinean traduites et expliquees par A. M. Du Caurroy, Paris, 1851, 8th ed. 2 vols. 8vo. The Institutes of Justinian, with English Introduction, Translation, and Notes, by Thomas Collet Sandars, M. A., London, 6th Eng. Ed. 1878. Several other translations have been published, among them being Abdy and Walker (1876), Mears (1882) and Moyle (1883). The latest work on the subject is Sohm's Institutes of Roman Law (1907), although this is primarily for students.

Theophilus' Institutes.

A paraphrase of Justinian, made, it is believed, soon after A. D. 533.

It is generally supposed that in A. D. 534, 535, and 536, Theophilus read his commentary in Greek to his pupils in the law school of Constantinople. He is conjectured to have died some time in A. D. 536. This paraphrase maintained itself as a manual of law until the eighth or tenth century. This text was used in the time of Hexabiblos of Harmenipulus, the last of the Greek jurists. It is also

conjectured that Theophilus was not the editor of his own paraphrase, but that it was drawn up by some of his pupils after his explanations and lectures, inasmuch as it contains certain barbarous phrases, and the texts of the manuscripts vary greatly from each other.

It has, however, always been somewhat in use, and jurists consider that its study aids the text of the Institutes: and Cuias and Hugo have both praised it. The first edition was that of Zuichem, fol. Basle, 1531; the best edition is that of Reitz, 2 vols. 4to, 1751, Haag. There is a German translation by Wusterman, 1823, 2 vols., 8vo; and a French translation by Mons. Ilregier, Paris, 1847, 8vo, whose edition is prefaced by a learned and valuable introduction and dissertation. Consult Mortreuil, Hist. du Droit Byzan., Paris, 1843; Smith, Dict. Biog. London, 1849, 3 vols. 8vo; 1 Kent, Comm. 533; Profession d'Avocat, tom. ii. note 536, p. 95; Introd. a l'Etude du Droit Romain, p. 124; Dict. de Jurisp.; Merlin, Repert.; Enc. d'Alembert.

INSTITUTION.

Ordinarily the term implies an established and organized society. Montgomery v. Wyman, 130 Ill. 22.

"It seems clear to us that the word 'institutions' in this clause [a clause exempting from taxation 'All buildings belonging to institutions of purely public character,' etc.] is used to designate the corporation or other organized body instituted to administer the charity." Humphries v. Little Sisters of the Poor, 29 Ohio St. 206.

The term "institution" is sometimes used as descriptive of an establishment or place where the business or operations of a society or association is carried on; at other times it is used to designate the organized body. Gerke v. Purcell, 25 Ohio St. 244.

"It is a little difficult to define the meaning of the term 'institution' in the modern acceptation of the word. It means, I suppose, an undertaking formed to promote some defined purpose having in view generally the instruction or education of the public. It is the body (so

to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle. Sometimes the word is used to denote merely the local habitation or the headquarters of the institution. Sometimes it comprehends everything that goes up to make up the institution-everything belonging to the undertaking in connection with the purpose which informs and animates the whole. A public library may, I think, be properly called an 'institution' in that sense." [Within the meaning of a statute exempting from income tax buildings the property of a literary or scientific institution.]" Lord Macnaghten, in Manchester v. McAdam, [1896] A. C. 511.

INSTITUTION OF A SUIT.

"Prosecuting an appeal to either the Supreme or Appellate Court certainly can not be said to be the institution of a suit * • •. It is equally evident that such an appeal is not for the recovery of any penalty or for the enforcement of any liability." Lake Erie, etc. R. Co. v. Watkins, 157 Ind. 604.

INSTITUTION OF LEARNING.

The expression "institution of learning," is broad enough to include every description of enterprise undertaken for educational purposes which is of higher grade than the public schools provided for in the statutes, and is not necessarily limited to either public or incorporated enterprises, or to both. Ordinarily, the word "institution" implies an established and organized society; but here, the words "institution of learning" seem to refer, not so much to the society or person or persons in control of the enterprise, as to the institution itself,—that is to say, the thing which is established, founded or instituted. That which is exempt from taxation is the property of the institution of learning, which plainly means the property owned by the institution. The property of and the property owned by an individual or corporation, as commonly used and understood, mean precisely the same thing. Ohio and Mississippi Ry. Co. v. Barker, 125 Ill. 303.

No matter where the legal title to the property may be vested, it is sufficient for the operation of the statute if the institution is the ultimate or beneficiary owner. Most usually the title is held by the society or corporation which manages and controls the institution of learning; but not necessarily so, for there may be no corporation or organized society and yet be an "institution of learning," in respect to which the ownership of property, within the true intent and meaning of the law, can be predicated. But in such case, it would seem, there must, in the nature of things, be a trustee or trustees, to hold the legal title to the property in trust for the purposes and objects of the institution of learning. The idea of ownership of property can only be connected with that which we call an institution of learning by means of the interposition of either a society or corporation or a trust. If the title is in the controlling corporation, or if it is vested in a trustee or trustees, for the objects to be accomplished through the instrumentality of the institution, in either event the property is, within the contemplation of the statute, the property of the institution of learning. Montgomery et al. v. Wyman et al., 130 Ill. 21, 22; McCullough v. Board of Review, 183 Ill. 373; The People v. St. Francis Academy, 233 Ill. 32.

INSTITUTION OF PUBLIC CHARITY.

A hospital which gives treatment without charge to all who ask for it on such terms is a public charity within the meaning of clause 7 of section 2 of the Revenue Act, exempting the property of such institutions from taxation, although such institution receives pay for such treatment from persons who are able to pay. German Hospital v. Board of Review, 233 Ill. 249.

INSTITUTIONS OF PURELY PUB-LIC CHARITY.

Revenue Act. Catholic Knights.

The State Council of Catholic Knights of Illinois is not within the meaning of

section 2 of the Revenue Act, exempting the property of "institutions of purely public charity" from taxation. Catholic Knights v. Board of Review, 198 Ill. 443.

INSTRUCTION.

The reading of the Bible in school is instruction. People v. Board of Education, 245 Ill. 346.

INSTRUCTIONS.

An instruction within the meaning of section 74 of the Practice Act is an announcement by the court to the jury of what the principles of law are that must be applied by the jury to the facts in the case in the determination of the issues involved. Devine v. City of Chicago, 178 Ill. App. 42; I. C. R. R. Co. v. Wheeler, 50 Ill. App. 209.

The office of instructions is to inform the jury what the law is relating to the case in hand, and to assist them in applying it to the evidence before them. Lander v. The People, 104 Ill. 250; Needham v. The People, 98 Ill. 281.

The office of an instruction is to give knowledge and information to the jury, for immediate application to the subject matter before them. The test, then, is, not what the ingenuity of counsel can, at leisure, work out the instructions to mean, but how and in what sense, under the evidence before them and the circumstances of the trial, would ordinary men and jurors understand the instructions. Street R. R. Co. v. Boyd, 156 Ill. 415-6.

"The office of an instruction is to give knowledge and information to the jury, for immediate application to the subject matter before them." Funk v. Babbitt, 156 Ill. 408.

INSTRUMENT.

Something reduced to writing as a means of evidence. State v. Kelsey, 15 Vroom (N. J.) 34.

"I am not aware of any authority for saying that in law the term 'instrument' has ever been confined to any definite class of legal documents. In the absence of such authority, I cannot but think the term ought to be interpreted according to its generally understood and ordinary meaning, as stated in the dictionaries of Dr. Johnson and of Webster. Both these give definitions first how the word is to be treated when applied to a chattel, namely, as 'a tool used for any work or purpose.' When applied to a writing, Dr. Johnson defines it as 'a writing—a writing containing any contract or order.' Webster's definition is 'a writing expressive of some act, contract, process, or proceeding.' When used generally, Dr. Johnson speaks of it as 'that by means whereof something is done.' Webster, as 'one who, or that which, is made a means, or caused to serve a purpose.' These definitions cover an infinite variety of writings, whether penned for the purpose of creating binding obligations or as records of business or other transactions." Hawkins, J., in Reg. v. Riley [1896] 1 Q. B. 314.

"The term instrument, in its broad sense, includes formal or legal documents in writing, including contracts, deeds, wills, bonds, leases, mortgages, etc. In the law of evidence it has a still wider meaning and includes not merely documents, but witnesses and things animate or inanimate which may be presented for inspection." Cardenas v. Miller, 108 Cal. 256, citing 1 Wharton on Ev. § 615; Black's Law Dict.

INSTRUMENT IN WRITING.

Administration Act.

A judgment is not an "instrument of writing" within the meaning of the act of 1823, providing that an executor shall not give preference to any debts "on account of the instrument of writing on which the same may be found." Woodworth v. Paine, 1 Ill. 376.

Interest Act.

A policy insuring an employer against liability for bodily injuries sustained by employees while in his employ is an "instrument in writing" within the meaning of section 2 of the Interest Act (J. & A., q 6691); Employers', etc., Corporation v. Kelly Const. Co., 195 Ill. App. 635.

Simple Contracts.

An instrument in writing is generally considered applicable only to simple contracts. Dunbar v. Bonesteel, 4 Ill. 34.

INSTRUMENT IN THE NATURE OF A LAST WILL.

A deed to a trustee to collect rents, etc., during the lifetime of the cestui que trust, and at her death to convey to such persons as such cestui que trust might appoint by will or by an "instrument in the nature of a last will," means by the quoted expression, a will, since no other instrument is in the nature of a will. Mc-Fall v. Kirkpatrick, 236 Ill. 296.

INSTRUMENT OF CONTRACT.

"In my view of the case, the telegram in question [a telegram sent to a bookmaker offering a bet at current odds on a certain horse for a certain race] is an instrument of contract; it is the instrument which completed the wages offered by C * * * and B to those who were able and disposed to accept it, and thenceforth an obligation was imposed upon each party in honor to fulfil it according to the result of the race." Hawkins, J., in Reg. v. Riley, [1896] 1 Q. B. 315, citing Carlile v. Carbolic Smoke Ball Co., [1892] 2 Q. B. 484; [1893] 1 Q. B. 256 and cases there cited.

INSTRUMENT OF GAMING.

A machine used for registering bets at a race is an "instrument of gaming." Tollet v. Thomas, 24 L. T. 509.

Money is not an "instrument of gaming." Watson v. Martin, 34 L. J. M. C. 50; 28 J. P. 775: Hirst v. Molesbury, 40 L. J. M. C. 76; L. R. 6 Q. B. 130; 23 L. T. 555.

INSTRUMENTALITY.

"Under s. 28, 23 & 24 V. c. 127, a solicitor is entitled to a charge for his costs on property recovered or preserved through his instrumentality. Suppose

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that a solicitor is employed in a hotly contested action, and prepares the whole case of the plaintiff down to the moment of trial, and that just before the trial the plaintiff changes his solicitor, and then, owing to the exertions of the solicitor formerly employed, he succeeds in the action. Can it possibly be said that that success is not owing to the "instrumentality" of the discharged solictor?" Per Kay, J., Re Wadsworth, 54 L. J. Ch. 640; 29 Ch. D. 517; 52 L. T. 613; 33 W. R. 558.

INSULATE.

The definition of the verb "insulate" in connection with electricity is to separate from other bodies by the interposition of a non-conductor (Cent. Dict.); to prevent the transfer to or from of electricity or heat by the interposition of a non-conductor (Webst. Dict. Unab.); Perkins v. Sanitary District of Chicago, 171 Ill. App. 589.

INSURABLE INTERESTS.

In Wood on Insurance (sec. 266) it is "It is not necessary that the insured should have either a legal or equitable interest, or indeed any property interest, in the subject matter insured. It is enough if he holds such a relation to the property that its destruction by the peril insured against involves pecuniary loss to him or those for whom he acts. It need not be an existing jus in re nor jus ad rem." Again, in section 268, the same author says: "The interest need not be vested. It is sufficient if it exists at the time of the insurance and loss, though contingent, and liable never to attach or be perfected by occupancy or possession," and, quoting from a leading case, he adds that "the contract of insurance is applicable to protect men against uncertain events which may in anywise be of disadvantage to them, -not only those persons to whom positive loss may arise by such events occasioning the deprivation of that which they may possess, but those also who, in consequence of such events, may have intercepted from them the advantage or profit which, but for such events,

they would acquire, according to the ordinary and probable course of things."

Mr. Justice Gray, in the case of Eastern Railroad Co. v. Relief Fire Ins. Co., 98 Mass. 423, used this language: "By the law of insurance any person has an insurable interest in property by the existence of which he receives a benefit or by the destruction of which he will suffer a loss, whether he has any title in or lien upon or possession of the property itself."

In May on Insurance (sec. 76, p. 82), it is said: "While the earlier cases show a disposition to restrict it (insurable interest) to a clear, substantial, vested, pecuniary interest, and to deny its applicability to a mere expectancy without any vested right, the tendency of modern decisions is to relax the stringency of the earlier cases, and to admit to protection of the contract whatever act, event or property bears such a relation to the person seeking insurance that it can be said with a reasonable degree of probability to have a bearing upon his prospective pecuniary condition. It sometimes exists where there is not any present property -any jus in re or jus ad rem. Yet such a connection must be established between the subject matter insured and the party in whose behalf the insurance has been effected as may be sufficient for the purpose of deducing the existence of a loss to him from the occurrence of an injury to And the same author further says (sec. 80, p. 87): "Generally, persons charged, either specially, by law, custom or contract, with the duty of caring for and protecting property in behalf of others or having a right so to protect such property, though not bound thereto by law, or who will receive benefit from the continued existence of the property, whether they have or have not any title to, estate in or lien upon or possession of it, have an insurable interest. person may suffer loss is a sufficient foundation for his claim to an insurable interest."

In McLaren v. Insurance Co., 5 N. Y. 151, property was sold at foreclosure sale, and it was held that the purchaser instantly acquired an insurable interest therein although no deed had been exe-

cuted, and that the subsequent execution of the deed had relation back to the time of purchase. And in the case of Aetna Ins. Co. v. Miers, 5 Sneed 139, it was held that where a person bid off real estate at an execution sale, although no deed has been executed or money paid thereon, he acquired an insurable interest in the property.

In Mutual Fire Ins. Co. v. Wagner, 7 Atl. Rep. 103, it was said that a person having a direct pecuniary interest in the property destroyed, so as to be damaged by its destruction, has an insurable interest.

In Murdock v. Franklin Ins. Co., 10 S. E. Rep. 778, it was held that the assured need not be an owner, if he be so circumstanced with respect to the property that he will derive some pecuniary benefit from the safety of the thing or its continued existence, and injury from its destruction.

In German Ins. Co. v. Hyman, 52 N. W. Rep. 402, it was said: "An interest, to be insurable, does not depend necessarily upon the ownership of the property. may be a special or limited interest, disconnected from any title, lien or possession. If the holder of an interest in property will suffer loss by its destruction he may indemnify himself therefrom by a contract of insurance. If by a loss the holder of the interest is deprived of the possession, enjoyment or profit of the property, or a security or lien resting thereon, or other certain benefits growing out or depending upon it, he has an insurable interest." Home Ins. Co. v. Mendenhall, 164 Ill. 463, 464, 465, 466. See also Home Ins. Co. v. Mendenhall, 64 Ill. App. 33; Agricultural Ins. Co. v. Clancey, 9 Ill. App. 139.

An insurable interest, in fire insurance, is such a title that, if there should be a loss, it would fall upon and have to be borne by the insured. Rockford, etc., Co. v. Nelson, 65 Ill. 420.

One who has paid part of the purchase price of land and has possession thereof under the contract has an insurable interest in the buildings thereon. Zenor v. Hayes, 228 Ill. 628.

An interest, to be insurable, does not depend upon title or ownership of the property; it may be a special or limited interest, disconnected from title, lien or possession. Merrett v. Farmers' Ins. Co., 42 Iowa 13.

INSURANCE.

"Insurance is a contract by which the one party, in consideration of a price paid to him adequate to the risk, becomes security to the other that he shall not suffer loss, prejudice or damage by the happening of the perils specified, to certain things which may be exposed to them."

Lucine v. Crawford, 2 Bos. & Pul. 300.

"Insurance, in its most general sense, is a contract whereby one party agrees to indemnify another in case he shall suffer loss in respect of a specified subject by a specified peril." 11 Am. & Eng. Ency. of Law, 280.

"Insurance is a contract whereby one, for a consideration, undertakes to compensate another if he shall suffer loss. Such, in its most general terms, is the definition of the contract which is to constitute the subject of the following chap-It is substantially the definition given long ago by Roccus, and is recommended alike by its brevity and its comprehensiveness,—qualities upon which subsequent writers have scarcely been able to improve. It had its origin in the necessities of commerce. It has kept pace with its progress, expanded to meet its rising wants and to cover its ever widening fields, and, under the guidance of the spirit of modern enterprise tempered by a prudent forecast, it has, from time to time, with wonderful facility adapted itself to the new interests of an advancing civilization. It is applicable to every form of possible loss. Whenever danger is apprehended or protection required it holds out its fostering hand and promises indemnity." 1 May on Insurance, secs. 1, 2.

"A contract whereby, for a stipulated consideration, one party undertakes to indemnify the other against certain risks."

1 Phillips on Insurance, sec. 1.

"A contract by which a person, in con-

sideration of a gross sum or a periodical payment, undertakes to pay a larger sum on the happening of a particular event." Smith on Common Law, 299.

"In law, a contract by which one party, for an agreed consideration, which is proportioned to the risk involved, undertakes to compensate the other for loss on a specified thing from specified causes." Century Dic., "Insurance."

"An act or system of insuring or assuring against loss; specifically the system by or under which indemnity or pecuniary payment is guaranteed by one party, or several parties, to another party, in certain contingencies, upon specified terms." Standard Dic., "Insurance."

"The act of insuring against loss or damage by a contingent event; a contract whereby one party undertakes to indemnify or guarantee the other against loss by certain specified risks." Webster's Dic., "Insurance." The People v. Rose, 174 Ill. 312, 313. See also Vredenburgh v. Physicians' Defense Co., 126 Ill. App. 511.

Insurance is an agreement by which the insurer, for a consideration, agrees to indemnify the insured against loss, damage or prejudice to certain property described in the agreement, for a specified period, by reason of specified perils. Barnes v. The People, 168 III. 429.

Insurance has for its purpose to guarantee against all forms of loss or pecuniary injury. People v. Potts, 264 Ill. 526.

In reference to all contracts of insurance, it is to be borne in mind that the predominant intention of the parties in a contract of insurance is indemnity, and this intention is to be kept in view in putting a construction upon policy and bylaws. A contract of insurance is always to be liberally construed in favor of the assured, so as not to defeat without a plain necessity the claim to indemnity. Phillips on Insurance, section 124: Healey v. Mut. Accident Ass'n, 133 Ill. 556; Terwilliger v. Masonic Accident Ass'n, 197 Ill. 9; Sup. Lodge Order of Mutual Protection v. Meister, 105 Ill. App. 474.

INSURANCE AGENT.

An insurance broker. East St. Louis v. Brenner, 59 Ill. App. 608; Lycoming Ins. Co. v. Ward, 90 Ill. 545; McKinney v. City of Alton, 41 Ill. App. 508.

INSURANCE BROKER.

An insurance broker is a middle man between the parties, and for some purposes is treated as the agent of both. Story on Agency, sec. 23, Bouvier's and Anderson's Law Dictionaries; Angell on F. & L. Ins., sec. 449. He is ordinarily employed by the insured and must be distinguished from the ordinary insurance agent who solicits insurance under employment by the insurance company. Mechem on Agency, sec. 931.

As stated by Arnold on Ins., vol. 1, p. 108, sec. 60, "Prima facie, the business of a policy broker would seem to be limited to receiving instructions from his principal as to the nature of the risk, and the rate of premium at which he wishes to insure, communicating these facts to the underwriters, and effecting the policy with them, on the best possible terms, for his employer." He represents no particular company (Ben Franklin Ins. Co. v. Weary, 4 Ill. App. 74; Kings Co. Fire Ins. Co. v. Swigert, 11 Ill. App. 590), and the company is not bound by his knowledge.

It is true a broker is also an agent, as said in Saladin v. Mitchell, 45 Ill. 83. "He is a middle man, and for some purposes is treated as the agent of both parties. When he is employed to buy and sell goods, it is the custom to give to the buyer a note of the sale, called a sold note, and to the sellers a like note, called a bought note, in his own name, as agent of each, whereby they are respectively bound, if he has not exceeded his authority." The same principle applies to insurance. The person applying for insurance wants to buy, and the insurance company wants to sell. An insurance broker "is the middle man, and for some purpose is treated as the agent of both parties." Both parties, in such case, may, without relation to each other, place their business in his hands, with, it may be. conditioned terms, as with right of inspection or approval, etc. City of East St. Louis v. Brenner, 59 Ill. App. 608, 609.

"The term broker, or insurance broker, is generally understood to mean a person who owes no duty or allegiance to any particular corporation. He is not one representing a particular corporation or corporations, within the meaning of the ordinance. He is free to procure insurance for others in any company he may select, and to solicit and procure business and patronage for any insurance company or companies he may select. short, we agree with counsel for appellee, that an insurance broker may be for certain purposes and at certain times an agent, but an insurance agent representing corporations engaged solely in insurance business, can not be an insurance broker or act as such.

"The views expressed by us, we think, are fortified by the authorities. ance brokers procure insurance and negotiate between insurers and insured.' Bouvier, Law Dict., title, 'brokers.' In Lycoming Ins. Co. v. Ward, 90 Ill. 545, it is said: 'If a party contracts with an agent for an insurance company for an insurance, and pays such agent the premium, the payment will be binding on the company whether the agent pay over the money or not. But if a premium is paid to a person by the assured, knowing at the time he was not an agent of the company, but only a street broker, the policy can not be enforced unless he pays over the money.'

"In Kings Co. Ins. Co. v. Swigert, 11 Ill. App. 590, it is also said: 'One who solicits insurance of the assured, and afterward procures a policy to be issued by the insurer, is not an agent of the latter. Nor does the fact that the insurer places its policy in the hands of the broker for delivery make him an agent.' Ben Franklin Co. v. Weary, 4 Ill. App. 74, is to the same effect. Our conclusion is that the word 'brokers,' used in the act, did not mean or 'include' insurance agents representing corporations, companies or associations engaged in insurance business." McKinney v. City of Alton, 41 Ill. App. 512, 513.

INSURANCE COMPANY.

The term "insurance company," in its broader meaning, includes fraternal beneficiary societies, but in its restricted sense, and when confined to its literal meaning, it does not include such societies. Peterson v. Manhattan, etc., Co., 244 Ill. 340.

Associations and societies which are intended to benefit the widows, orphans, heirs or devisees of deceased members thereof, and members who have received a permanent disability, and where no annual dues or premiums are required, and where the members shall receive no money as profit or otherwise, except for permanent disability, are not insurance companies within the meaning of the Corporations Act. Corporations Act, § 31; Peterson v. Manhattan, etc., Co., 244 Ill. 336.

An insurance company or corporation is a corporation organized for the purpose of making contracts of insurance against loss of property by fire, hail, perils of the sea, or other causes, or against personal injury, or upon life, etc. But corporations commonly known as "beneficial associations," and intended merely for the mutual benefit or protection of their members, are not insurance companies. Such corporations are more in the nature of charitable organizations. Fletcher Cyclopedia Corporations 135.

INSURANCE CONTRACT.

An insurance contract is a contract whereby one party agrees to wholly or partially indemnify another for loss or damage which he may suffer from a specified peril. The People v. Rose, 174 Ill. 314.

"INT."

See "A."

INTANGIBLE PROPERTY.

See also Choses in Action; Tangible Property.

While it has been held that tangible personal property can have a situs differ-

ent from that of the owner (Mills v. Thornton, 26 Ill. 300), it has also been held that debts and choses in action are a species of intangible property and for purposes of taxation follow the domicile of the owner, but that when the owner is not a resident of this State, and has the evidence of his credits in the hands of an agent in this State, then such credits are to be assessed in the hands of the agent. Ellis v. The People, 199 Ill. 552.

The expression "intangible property," used in the Revenue Act in relation to the taxation of the property of corporations, means the capital stock and franchises of such corporations. People v. Upham, 221 Ill. 559.

INTEGRITY.

"The word integrity as here used, [in the code providing that no person is competent to serve as an executor who is wanting in integrity, etc.] means soundness of moral principle and character, as shown by a person's dealing with others, in the making and performance of contracts, in fidelity and honesty in the discharge of trusts. In short, it is used as a synonym for probity, honesty, and uprightness in business relations with others." In Re Bauquier, 88 Cal. 307.

INTEMPERANCE.

The use of anything beyond moderation; use beyond moderation. Mullinix v. People, 76 Ill. 213.

"Intemperance" does not necessarily imply "drunkenness." Mullinix v. People, 76 Ill. 213.

INTEMPERATELY.

An instruction in an indictment for selling intoxicating liquor to a person who is in the habit of getting intoxicated that "a person who is in the habit of drinking intoxicating liquors intemperately is a person who is in the habit of getting intoxicated, within the meaning of the statute" is erroneous, and misleading, intemperance not necessarily implying drunkenness. Mullinix v. People, 76 Ill. 213.

INTENDED.

A part of a building estate was sold to A. under restrictive covenants as to user and occupation, and in the conditions of sale and also in the recitals to the conveyance to A. it was stated that "it is intended" that the other parts of the estate should, in the hands of the respective purchasers thereof, be subject to similar covenants, but the vendor entered into no covenant in that behalf with A.; held, that "intended" amounted, if not to a covenant, yet to an implied agreement by the vendor, and that he could be restrained by A. from selling the remaining parts of the estate free from the restrictive covenants, so as to contravene the building scheme thereby contemplated. Mackenzie v. Childers, 43 Ch. D. 265; 59 L. J. Ch. 188; 34 S. J. 142. See Collins v. Castle, 57 L. J. Ch. 76: Sheppard v. Gilmore, Ib. 6: Spicer v. Martin, 58 L. J. Ch. 309.

INTENDED HUSBAND.

A clause restraining alienation of a married woman's separate estate being applicable to all her covertures, unless expressly limited (Re Gaffee, 19 L. J. Ch. 179; 1 Mac. & G. 541), the phrase, in a marriage settlement, that separate estate is to be enjoyed by the lady "independently of her said intended husband" is not enough to confine the restraint clause to that particular coverture. Hawkes v. Hubback, 40 L. J. Ch. 49; L. R. 11 Eq. 5: Shafto v. Butler, 40 L. J. Ch. 308; 19 W. R. 595.

INTENDED TO BENEFIT.

See Benefit.

INTENDED TO DISTINGUISH.

Ballots are "without any marks or figures thereon, intended to distinguish one ballot from another," within the meaning of section 15 of the act of 1849, although such ballots showed blue lines printed thereon by the manufacturer, it appearing that the paper was accidentally used for ballots. People v. Kilduff, 15 Ill. 501.

INTENT.

When referred to an act denotes a state of the mind with which an act is done. State v. Tom, 2 Jones Law (N. C.) 416. The presence of will in the act which consummates a crime. It is the exercise of intelligent will, the mind being fully aware of the nature and consequence of the act which is about to be done, and with such knowledge and with full liberty of action willing and electing to do it. Smith v. The State, 2 Lea (Tenn.) 619.

INTENT TO DECEIVE.

"If, in a case where a party represents his goods as those of someone else, the goods are on the face of them (and with regard to other circumstances) calculated to deceive, no evidence is required to prove the intention to deceive. A man must be taken to have intended the reasonable and natural consequences of his acts. Saxlehner v. Apollinaris Co., [1897] 1 Ch. 900.

INTENTION.

Negligence is not a matter of intention. Walker v. Chicago & A. R. Co., 149 Ill. App. 411.

The rule that the construction of a will must be controlled by the "intention" of the testator uses the quoted term in the sense of the intention as expressed by its words, and not an intention which, it might be inferred from the curcumstances, testator may have had, but which he failed to express in words. Downing v. Grigsby, 251 Ill. 572.

Both in civil and criminal suits, where the intent of the party becomes a material issue in the case, that party may be asked the direct question what his intention was at the particular time, or with respect to the particular act in question. In civil cases, however, where there is no evidence that such intention was communicated to the opposite party, and no circumstances from which it might be fairly submitted to the jury as a question of fact that the other party had notice of the particular intent, then the evidence

should be excluded; not, however, on the grounds of incompetency but on that of immateriality. McNeil's III. Evidence 725.

INTENTION AND EXPECTATION.

A court of equity will not execute the expressed "intention and expectation" of a father to give his son a farm, unless such "intention and expectation" have ripened into and become embodied in a definite agreement. Clark et al. v. Clark, 122 Ill, 292.

INTENTION OF THE TESTATOR.

The use of the expression that the intention of the testator is to be the guide, unaccompanied with the constant explanation that it is to be sought in his words, and a rigorous attention to them, is apt to lead the mind insensibly to speculate upon what the testator may be supposed to have intended to do, instead of strictly attending to the true question, which is, what that which he has written means. Blatchford v. Newberry, 99 Ill. 50.

In finding the intention of a testator the courts have laid down a rule which must always be kept in mind: that the intention of the testator must be found from the words employed by him in the will in the light of his circumstances and surroundings, such as the state of his property and his family. It is an old and familiar rule, frequently referred to, that while cases on wills may furnish general rules of construction, each will must be construed in the light of its own language and the facts and circumstances surrounding the testator at the time the will was made, and for that reason decisions in will construction can have little weight as to any particular will, the courts always looking to the intention of the testator as the polar star to direct them. Strickland v. Strickland, 271 Ill. 618-619.

INTENTION TO DEDICATE.

"The fact that the owner permits a roadway to be constantly used by the public for a number of years, and fails to

either enclose his premises or institute suit, does not establish an intention to dedicate." Ottawa v. Yentzer, 160 Ill. 509, citing Kelly v. Chicago, 48 Ill. 388.

INTENTION TO EXERCISE A POWER.

A person intends to exercise a power when he intends the effect of its exercise te follow. Mogridge v. Clapp [1892] 3 Ch. 382.

INTENTIONALLY.

See also Corruptly.

The cases and text writers seem to use interchangeably the words "willfully," "intentionally," "means," and "voluntarily" as synonymous terms in discussing the question of the making of declarations or performing acts from which it is alleged that an estoppel arises. Gillett v. Wiley, 126 Ill. 323.

INTERDICT UNDE VI.

An injunction in the nature of an interdict, to restore a possession from which a party has been forcibly ejected. Wangelin v. Goe, 50 Ill. 465.

INTERESSE TERMINI.

The right to the possession of a term at a future time; and, upon an ordinary lease to commence instanter, the lessee, at common law, has an interesse termini only until entry. Austin v. Huntsville Coal, etc. Co., 72 Mo. 542.

The phrase interesse termini relates to the interest which the termor has before he has taken possession by force of the lease which has been made to him. The expression is never used with regard to a freehold lease. Ecclesiastical Commissioners v. Treemer [1893] 1 Ch. 166.

INTEREST.

Applied to Loan of Money.

The compensation which is paid by the borrower to the lender, or by the debtor | to a debt. It is a legal incident that the

to the creditor, for its use. Davis v. Rider, 53 Ill. 417.

A compensation, usually reckoned by percentage, for the loan, use or forbearance of money. Beach v. Peabody, 188 III. 79; A. T. & S. F. R. Co. v. C. & W. I. R. Co., 54 Ill. App. 407.

Interest is defined to be, "The compensation which is paid by the borrower of money to the lender, for its use, and generally, by a debtor to his creditor, in recompense for his detention of the debt." Bouvier's Law Dictionary; Sorensen v. Central Lumber Co., 98 Ill. App. 582.

At common law interest was synonymous with usury, and hence is not recoverable unless allowed by statute. City of Pekin v. Reynolds, 31 Ill. 529; Ill. Cent. R. R. Co. v. Cobb, 72 Ill. 148; Greenwood v. La Salle, 137 Ill. 230; I. C. R. Co. v. Cobb, 72 Ill. 148; Munger v. Jacobson, 99 Ill. 347; A., T. & S. F. R. R. Co. v. C. & W. I. R. R. Co., 54 Ill. App. 407; Harts v. Fowler, 53 Ill. App. 249.

At common law, interest is the consideration or price that is agreed between parties, to be paid for the use of money for a stipulated time. At common law, if no agreement for interest be made, it cannot be recovered, although the payment of the debt should be unreasonably delayed. To remedy this defect of the common law, interest is given by statute in certain specified cases, from the time that the debt becomes due, until payment is actually made. Hence statute interest may properly be defined to be the legal damages or penalty for the unjust detention of money. County of Madison v. Bartlett, 2 Ill. 69, 70.

Interest is compensation allowed to the creditor for delay of payment by the debtor. It is completely due whenever a liquidated sum of money is unjustly withheld. It is a legal and uniform rate of damages allowed, in the absence of any express contract, when payment is withheld after it has become the duty of the debtor to discharge the debt. A., T. & S. F. R. R. Co. v. C. & W. I. R. R. Co., 162 III. 652-653; A., T. & S. F. R. R. Co. v. C. & W. I. R. R. Co., 54 Ill. App. 407.

Generally, interest is a mere incident

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law itself attaches to an obligation to pay where payment of the debt is delayed beyond the time of its maturity, and is as much favored as the principal. McConnel v. Thomas, 2 Scam. 313; Willard v. Dubois, 29 Ill. 48; Tucker v. Page, 69 Ill. 179; Heiman v. Schroeder, 74 Ill. 158; Chicago Title & Trust Co. v. McGlew, 90 Ill. App. 61, 62.

Rate.

Section 9, chapter 74, of the Revised Statutes provides: "Whenever, in any public or private instrument whatever, a certain rate of interest is or shall be mentioned, and no period of time is stated for which such rate is to be calculated, interest shall be calculated at the rate mentioned by the year, in the same manner as if 'per annum' or 'by the year' had been added to the rate." Hayes v. Hammond, 162 Ill. 137.

The legal implication from the words used in the notes, viz., "interest at 6 per," is that they were to bear interest at the rate of six per cent per annum. In Gramer v. Joder, 65 Ill. 314, the note sued on read: "One year after date I promise to pay to the order of Barbary Joder, the sum of four thousand dollars at ten per cent value received." Held, the meaning was that the note bore interest at the rate of ten per cent per annum. In Thompson v. Hoagland, 65 Ill. 310, the note read, "One year after date I promise to pay Wm. Thompson, or order, \$374.79, at ten per centum from date." Held, that the note bore interest at the rate of ten per cent per annum. Fitzgerald v. Lorenz, 79 111. App. 654.

Laws.

Laws declaring at what rate a man may loan his money. Munn v. People, 69 Ill. 91.

Land.

The right perpetually to overflow land with water is an interest in the land. Woodward v. Seely, 11 Ill. 165.

Contract to Sell Land.

A contract to sell "my undivided interest in land" belonging to a named estate, refers, by the word "interest," to the part

or share of the vendee in the land referred to, and is not to be construed as designating the extent of the vendor's title. Brooks v. Halane, 116 Ill. App. 386.

Frauds and Perjuries Act.

A leasehold estate is an "interest in or concerning" land within the meaning of section 2 of the Frauds and Perjuries Act (J. & A. ¶ 5868). Taylor v. Marshall, 255 Ill. 547; Chicago, etc., Co. v. Davis, etc., Co., 142 Ill. 180.

Witness.

The interest which disqualifies a witness must be a present, certain legal interest of a pecuniary character, and the test is whether he will either gain or lose, financially, as the direct result of the suit, or whether the judgment or decree will be evidence for or against him in another action. O'Brien v. Bonfield, 213 Ill. 434; Scott v. O'Connor-Couch, 271 Ill. 397.

The true test of the interest of a witness is that he will either gain or lose by the direct operation and effect of the judgment or that the record will be legal evidence against him. 1 Greenleaf on Evid., sec. 390. A witness, if otherwise competent, may, of course, testify against his interest. 1 Greenleaf, Evid., sec. 410; Thompson v. Wilson, 56 Ill. App. 162.

Wills Act.

Section 8 of the Wills Act, providing that where a will gives "any beneficial devise, legacy or interest to one who acted as a witness to the will, such devise, legacy or interest shall be void unless the will was validly executed without such witness, intended, by the word "interest," to cover a right created by a will other than that which might be properly designated as a devise or legacy, and covers a contingent and uncertain interest such as that which accrues to an executor by virtue of his appointment. Jones v. Grieser, 238 Ill. 189.

INTEREST IN LAND.

"By the construction put upon the Mortmain Act (9 G. 2, c. 36; repealed but its provisions re-enacted by the Mort-

main and Charitable Uses Act, 1888), no Interest in Land can be given by will to charitable uses. For the very numerous and frequently conflicting cases defining what is an Interest in Land within these provisions, see Tudor, Char. Trusts, 398-409; Wms. Exs. 1062-1074; 1 Chit. Stat. 3 Ed. 486; Seton, 599, 600.

"In Jervis v. Lawrence (52 L. J. Ch. 244; 22 Ch. D. 202), Bacon, V.-C., said, I believe there is a fault that has been committed in a great many of these cases. Many of the cases came under review in Attree v. Hall (47 L. J. Ch. 863; 9 Ch. D. 337), which decided that a railway debenture is not an interest in land. The principle of that case as stated by Jessel. M. R., Re Harris (49 L. J. Ch. 687; 15 Ch. D. 561), is that in order to create an interest in land, within the statute of Mortmain, the land must be affected directly. In re Harris decided that bonds charged on police rates under 3 & 4 V. c. 88, and now payable by justice's precept under 7 & 8 V. c. 33, are pure personalty. Va. the effect of Attree v. Hall, and Re Harris, (sup.), on the cases prior thereto, discussed and applied by Bacon, V.-C., in Jervis v. Lawrence (sup.). In the last case the learned judge illustrated his position by the following (perhaps questionable) reasoning, "A man who has a power of distress has no interest in the land. A landlord or lessor, while the lease subsists, has no interest in the land;" but only his right of distress. It was in that case held that bonds created under the Act for the improvement of the Norland Estate, in St. Mary Abbot's, Kensington (6 V. c. xxxiii.), and which were secured by a rate levied upon owners or occupiers on the estate and enforceable against them by action or distress, did not create an interest in land, but were pure personalty. So a charge binding assets of a building society is not an interest in land within the Mortmain Act: but a charge on municipal rates, or on a legacy payable out of realty and personalty, is (Walmsley v. Rice, 29 S. J. 256). * * A share of proceeds of realty the time for selling which has not arrived is an interest in land. Brook v. Badley, 36 L. J. Ch. 741; 3 Ch. 672. Whether

statutory duties, tolls or dues are an interest in land within the Statute of Mortmain depends on the particular provisions of the Act by which they are authorized. Re Christmas, 55 L. J. Ch. 878; 33 Ch. D. 332; 55 L. T. 197; 34 W. R. 779; 50 J. P. 759, in which see Knapp v. Williams, 4 Ves. 430 n., commented on and explained. Re David, Buckley v. Lifeboat Inst., 43 Ch. D. 27; 59 L. J. Ch. 87; 60 L. T. 786.

By s. 4 of the Statute of Frauds (29 Car. 2, c. 3) no contract for the sale of lands, tenements or hereditaments or "any interest in or concerning them" is valid, unless evidenced by a signed writing. For the cases on that provision, see Add. C. 159 et seq.; Woodf. 86, 87; Rosc. N. P. 285. These decisions have gone to the length of establishing that a right to shoot game and take it away for one's own benefit is an "interest in land" within the St. of Frauds. Webber v. Lee, 51 L. J. Q. B. 486; 9 Q. B. D. 315, which see for cases establishing the contrary as regards contracts for board and lodging, use of a graving-dock, shares in a cost-book mine, and an opera box. So the sale of standing buildings to be taken down and cleared away in 2 months is of an "interest in land." Lavery v. Pursell, 57 L. J. Ch. 570; 39 Ch. D. 508; 58 L. T. 846; 37 W. R. 163. Vf. McManus v. Cooke, 56 L. J. Ch. 662; 35 Ch. D. 681; 56 L. T. 900; 35 W. R. 754; 51 J. P. 708: Gray v. Smith, 43 Ch. D. 208; 58 L. J. 803; 38 W. R. 310.

" 'Lands' or an 'interest in land' within s. 3, Lands C. C. Act, 1845, includes an equitable interest (Martin v. Lond. Chatham & Dover Ry., 35 L. J. Ch. 795; 1 Ch. 501; 14 W. R. 880; 14 L. T. 814); but not a contract for purchase. Tasker v. Small, 7 L. J. Ch. 19; 3 M. & Cr. 63: and see that case cited in the judgment of Erie, C. J., in Bird v. G. E. Ry., 34 L. J. C. P. 371; 13 W. R. 991; 19 C. B. N. S. 267. A right of shooting by an agreement not under seal, is not an interest in land within the L. C. C. Act, nor (probably) would it be so if granted by deed. Bird v. G. E. Ry., sup. A quarterly tenant, after notice to quit duly given, has no interest in land entitling him to notice under s.

18, L. C. C. Act, 1845. Syers v. Metrop. Board of Works, 36 L. T. 277.

"A right of support, or of light, is not an 'interest in land' within s. 19, Artisans' and Laborers' Dwellings Improvement Act, 1875 (38 & 39 V. c. 36); but is an 'easement' upon the servient tenement within s. 20 of that Act." Barham v. Marris, 45 L. T. 579; 52 L. J. Ch. 237: Swainston v. Finn, 52 L. J. Ch. 235.

"I think that a mortgage by some of the cestuis que trust of their interests under a settlement, the funds subject to which are invested on mortgage of land, confers an interest in land [within the meaning of the statute, 9 Geo. 2, c. 36, § 3 which provides that all gifts of any estate or interest in land shall be null and void if made in any other manner or form than is directed and appointed by the statute]." Cotton, L. J., in In re Watts, 29 Ch. D. 951, citing Brook v. Badley, Law Rep. 3 Ch. 672.

"The interest of a person beneficially entitled [whether by possession or reversion] to money invested on mortgage held by his trustee" is "an interest in land within the meaning of a statute [Fines & Recoveries Act, 3 & 4 Will. 4. c. 74, § 77] providing that it shall be lawful for every married woman to dispose of any estate which she alone or she and her husband in her right may have, and in which the word 'estate' is defined to extend to any interest in land either at law or in equity]." Lindley, L. J., in Miller v. Collins [1896] 1 Ch. 586, citing Briggs v. Chamberlain, 11 Hare, 69; Tuer v. Turner, 20 Beav. 560; Williams v. Cooke, 4 Giff. 343; In re Durrant, 18 Ch. D. 106; Brook v. Badley, L. R. 3 Ch. 672; In re Watts, 29 Ch. D. 947.

"An interest in the proceeds of land sold is 'an interest in land,' in contradistinction to 'an estate in land' [within the meaning of a statute (dower act, 3 & 4 Will. 4, c. 105, § 9) which provides that a widow shall not be entitled to dower in any of her husband's land where he leaves her any land out of which she would be otherwise entitled to dower, or leaves her any estate or interest therein]. Apart from all authority the point is quite plain: but the case is not with- | Grath v. People, 100 Ill. 465.

out authority applicable to it, because the late master of the rolls, says this in Lacey v. Hill [Law Rep. 19 Eq. 346, 350] 'Now, it is said or suggested that giving real estate upon trust to sell and giving the widow part of the proceeds even in the shape of a part of the capital, or of any income of the proceeds to be invested,'that is exactly what has been done here-'is not a gift of an estate or interest in the land for the benefit of the widow. am of opinion that it is." Kay, J. alone in In re Thomas, 134 Ch. D. 172.

"Fructus industriales do not under any circumstances constitute an interest in land. Fructus naturales are considered to do so if the sale contemplates the passing of the property in them, before they are severed from the soil." Anson, Princ. Cont. 61.

INTEREST IN THE RESULT OF THE SUIT.

Mr. Greenleaf, in his work on Evidence (vol. 1, sec. 386), defines an interest in the result of a suit to be "some legal, certain and immediate interest, however minute, either in the event of the cause itself, or in the record, as an instrument of evidence, in support of his own claims, in a subsequent action. It must be a legal interest, as distinguished from the prejudice or bias resulting from friendship or hatred, or from consanguinity, or any other domestic or social or any official relation, or any other motives by which men are generally influenced, for these go only to the credibility." Chicago City Ry. Co. v. Mager, 185 Ill. 337.

INTERESTED AS A PARTY OR OTHERWISE.

The state is "interested as a party or otherwise," within the meaning of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act). in order to warrant a case being taken by appeal or writ of error directly to the Supreme Court, where it has a substantial or monetary interest in the case.

INTERESTED IN.

"Interested in" a business or bargain seems a little wider expression than "concerned in." A person is "interested in" a contract if he be a shareholder in a company who has that contract. Dimes v. Grand Junc. Canal Co., 3 H. L. Ca. That construction still applies as regards officers and servants of Local Authorities in respect of s. 193, P. H. Act, 1875. Todd v. Robinson, 54 L. J. Q. B. 47; 14 Q. B. D. 739; 52 L. T. 120; 49 J. P. 278. An officer of a Local Authority who lets rooms to the board is "concerned or interested in a bargain or contract" within that section (Burgess v. Clark, 14 Q. B. D. 735); and a town surveyor who takes out the quantities for a contract for which he is paid by the contractor, is "interested in" the contract. Whiteley v. Barley, 57 L. J. Q. B. 643; 21 Q. B. D. 154; 36 W. R. 823; 52 J. P. 595; R. v. Ramsgate, 58 L. J. Q. B. 352: R. v. Whiteley, 58 L. J. M. C. 164.

INTERESTED THIRD PERSONS.

The requirements of sections 1, 2, 3 and 4, of the chattel mortgage act, apply only as to interested third persons, and do not in any manner affect the status of the parties to the instrument. The third person that may avail of the statute must have an interest in the property, such as that of subsequent purchaser, subsequent incumbrancer, lienor, judgment creditor, or an officer, bailiff or custodian in possession by virtue of a valid writ, execution or warrant. Sumner v. McKee, 89 Ill. 127; Allcock v. Loy, 100 Ill. App. 575.

INTERESTED THEREIN.

See Parties Concerned.

INTERLINEATION.

"Interlineation," s. 21, 1 V. c. 26, is not confined to something written between lines; it includes something put into one of the lines, but written on the line. Per Hannen, P., Bagshawe v. Canning, 52 J. P. 583.

INTERLOCUTORY.

See also Order.

Judgment or Decree in General.

"A decree is understood to be interlocutory whenever an inquiry as to matters of law or fact is directed preparatory to a final decision." McMahon v. Quinn et al., 140 Ill. 202.

A decree in which the party in whose favor it is made can not obtain the benefit thereof without further hearing before the court, is interlocutory. Johnson v. Everett, 9 Paige Ch. R. 636; Adamski v. Wieczorek, 66 Ill. App. 584.

In Cooke v. Gilpin, 1 Rob. Va. 20, Mr. Justice Baldwin said, p. 27: "Where the further action of the court in the cause is necessary to give completely the relief contemplated by the court, there the decree upon which the question arises is to be regarded not as final, but interlocutory. I say the further action of the court in the cause, to distinguish it from that action of the court which is common to both final and interlocutory decrees, to wit, those measures which are necessary for the execution of a decree that has been pronounced, and which are properly to be regarded as adopted, not in, but beyond, the cause, and as founded on the decree itself or mandate of the court, without respect to the relief to which the party was previously entitled upon the merits of his case." DeGrasse v. H. W. Gossard Co., 138 Ill. App. 379.

Where further judicial action is contemplated and is necessary, a decree is interlocutory and not final. Gray v. Ames, 220 Ill. 254; Terry Lumber Co. v. Mildred Park Amusement Co., 143 Ill. App. 207.

A decree which does not determine all the equities in the case but leaves some of them to be subsequently judicially determined on the master's statement of an account is interlocutory. Gray v. Ames, 220 Ill. 255.

The mere fact that some things remain to be done does not make a decree inter-locutory. Wheelberger v. Knights, 71 Ill. App. 333.

An interlocutory judgment is one given in the course of a cause before final judg-

ment. Nacoochee Hydraulic M. Co. v. Davis, 40 Georgia 320. Interlocutory judgments are such as is given in the progress of a cause upon some plea, proceeding, or default, which is only intermediate, and does not finally determine or complete the suit; but contemplates further proceedings for that purpose. Elliott v. Mayfield, 3 Ala. 226.

"Any order, in my opinion, which does not deal with the final rights of the parties, but merely directs how the declarations of right already given in the final judgment are to be worked out is interlocutory, just as an order made before judgment is interlocutory where it gives no final decision on the matters in dispute, but merely directs how the parties are to proceed in order to obtain that final decision." Cotton, L. J. in Blakey v. Latham, 43 Ch. D. 25.

Reserved Questions.

A decree in a bill for separate maintenance finding that the wife was entitled to separate maintenance but reserving the question of the amount to be awarded is interlocutory. Hunter v. Hunter, 100 Ill. 521.

Appointing Receiver.

A decree appointing a receiver is interlocutory. Coates v. Cunningham, 80 Ill. 468.

Removing Receiver.

A decree removing a receiver is interlocutory. Vandalia v. St. Louis, etc., R. Co., 209 Ill. 80; Farson v. Gorham, 117 Ill. 137.

Accounting.

A decree in a bill for an accounting is not interlocutory merely because it contains an order or reference by which the accounts are to be stated according to principles fixed by the decree, but where such principles are not so fixed, and judicial action is contemplated and necessary, or where some equity other than that involved in the accounting remains for further adjudication, the decree is interlocutory, unless the status of the account or other matter is to be thereafter determined apart from the equities involved.

Gray v. Ames, 220 Ill. 254. See also De-Grasse v. H. W. Gossard Co., 138 Ill. App. 375, to a similar effect.

Injunction.

"The sole object of an interlocutory injunction is to preserve the subject in controversy in its then condition. It cannot be used for the purpose of taking property out of the possession of one party and putting it into the possession of another." High on Injunctions, sec. 3; Parker v. Shannon, 114 Ill. 192; Mitchell v. Hannah and Hogg, 121 Ill. App. 599.

Opening Decree for Rehearing.

A decree opening an original decree for rehearing is interlocutory. Adamski v. Wieczorek, 170 Ill. 376.

Order.

An order is interlocutory and made on motion or petition. People v. Cook, etc., Court, 169 Ill. 215.

Order Dissolving Preliminary Injunction.

An order dissolving a preliminary injunction is interlocutory. Lehmann v. Shimeall, 195 Ill. App. 512.

Order Overruling Demurrer.

An order overruling a demurrer to a bill is an interlocutory order. Smith v. Dellitt, 244 Ill. 76.

Judgment.

A judgment which is rendered as to some steps in the cause, without determining the rights of the parties in that suit, but leaving them to be determined by a further judgment is interlocutory. Scholfield, J., dissenting opinion Cook County v. Calumet, etc., Co., 131 Ill. 518.

Judgments are either interlocutory or final. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question or default arising in the progress of the cause but does not adjudicate the ultimate rights of the parties or finally put the case out of court. Any order or judgment which does not settle and conclude the rights involved in the action and does not deny to the party the means of further prosecuting or defending the

suit is not so far final as to be a proper subject of appeal. Cramer v. Commercial Men's Ass'n, 260 Ill. 524.

INTERMEDIATE FAMILY.

See Family.

INTERMENT.

Re-interment of human remains is not an "Interment" of bodies, within s. 44, 15 & 16 V. c. 85. Scadding v. St. Pancras, W. N. (89) 45, 120.

INTERNAL AFFAIRS.

The term "internal affairs" as applied to corporations has no very definite or fixed meaning, but it must be confined to relations affecting only the stockholders and the corporation among themselves. Edwards v. Schillinger, 245 Ill. 245.

INTERNAL DISPUTE.

"The contention was that the arbitration clause [in a building society's rules] only applied to internal disputes. Now 'internal' is a rather unfortunate expression. In my opinion it applies to all disputes between members and the society with reference to the true construction and effect of the rules of the society, and if so, this [a dispute in which the society declined to pay back his subscription to a withdrawing member (who claimed them under a rule which provided that withdrawing members should be entitled to receive their subscriptions if sufficient funds were available) on the ground that they had not sufficient funds in hand while the member contended that they had] is an internal dispute." Cotton, L. J. in Walker v. General, etc. Building Society, 36 Ch. D. 783.

INTERNAL IMPROVEMENTS.

Where internal improvements under state authority is spoken of, it is universally understood that works within the state, by which the public are supposed to be benefited, are intended. W. P. R. R. v. Comrs. of Colfax Co., 4 Neb. 456.

INTERNATIONAL LAW.

The system of rules which Christian states acknowledge to be obligatory upon them in their relations to each other and to each other's subjects. It is the jus inter gentes, as distinguished from the jus gentium.

The rules of conduct regulating the intercourse of states. Halleck, Int. Law, 41; Davis, Int. Law, § 2. It consists of those rules of conduct which reason deduces as consonant to justice from the nature of the society existing among independent nations, with such definitions and modifications as may be established by mutual consent. Wheaton, Int. Law, § 14.

International law has been divided into (1) public, and (2) private, under which division public international law is the law of nations as above defined, while private international law consists of the rules by which courts determine within what national jurisdiction an action or proceeding falls, or by what national law it should be decided. Glenn. Int. Law, § 2.

Various divisions of international law have been proposed, but none are of any One has been into great importance. natural and voluntary law, in which latter conventional or treaty law and customary are embraced. Another, somewhat similar, separates international rules into those which are deducible from general natural jus, those which are derived from the idea of estate, and those which grow out of simple compact. Whatever division be made, it is to be observed that nations are voluntary, first, in deciding the question what intercourse they will hold with each other; second, that they are voluntary in defining their rights and obligations, moral claims and duties, although these have an objective existence beyond the control of the will of nations; and third, that, when international law has arisen by the free assent of those who enter into certain arrangements, obedience to its provisions is as truly in accordance with natural law, which requires the observance of contracts, as if natural law had been intuitively discerned or revealed from heaven, and no consent had been necessary at the outset.

International law as understood among civilized nations, may be defined as consisting of those rules of conduct which reason deduces as consonant to justice, from the nature of society, existing among independent nations; with such definitions and modifications as may be established by general consent. Heirn v. Bridault, 37 Miss. 230.

INTERNATIONAL COPYRIGHT ACTS.

"The Acts mentioned in the first schedule of the Order in Council (of November 28, 1887) providing for the protection of foreign authors in England, are, by § 2 of the International Copyright Act, 1886, collectively referred to as 'International Copyright Acts.' Among them is the International Copyright Act, 1844. Haufstaengl Art, etc., Co. v. Holloway [1893] 2 Q. B. 5, citing International Copyright Act, 1886, § 2; Order in Council of November 28, 1887, in London Gazette, December 2, 1887.

INTERPLEADER.

Right to Remedy.

"A bill of interpleader lies when two or more persons claim the same fund or property by different or separate interests, and the custodian does not know to whom, of right, it belongs, and between whom he is wholly indifferent." Ryan v. Lamson, 153 Ill. 520; Cogswell v. Armstrong et al., 77 Ill. 139; Moore v. Partlow, 84 Ill. App. 372.

At first, this much needed and beneficent remedy was hedged about by strict rules; but, as its equity and usefulness were more clearly recognized, these rules were modified (Supreme, etc., v. Merrick, 163 Mass. 374), until now the test of the right to an interpleader may be stated thus: do the defendants claim the same thing, and will the litigation between the defendants determine the rights of each and all of the defendants as against the complainant and as between themselves as to the thing which is in dispute? In Hoggart v. Cutts, 1 Craig & P. 204, Lord

Cottenham said: "The definition of 'interpleader' is not and cannot now be disputed. It is where the plaintiff says, 'I have a fund in my possession, in which I claim no personal interest, and to which you, the defendants, set up conflicting claims; pay me my costs, and I will bring the fund into court, and you shall contest it between yourselves."

This definition is cited with approval in Cogswell v. Armstrong, 77 Ill. 139; Wakeman v. Kingsland, 46 N. J. Eq. 113; Anderson v. Wilkinson, 10 Smed. & M. (Miss.), 601, and in Greene v. Mumford, 4 R. I. 313.

The rule seems to be (although there are many well considered cases in England and in this country to the contrary, Wells v. Miner, 25 Red. R. 538; Crane v. McDonald, 118 N. Y. 654), that the same debt, duty of thing must be severally claimed by the defendants from the plaintiff by virtue of a title dependent upon or derived from a common source. Byers v. Sansom-Thayer Commission Co., 111 App. 577, 578.

Where two or more persons claimed the same fund or property, by different or separate interests, and another person does not know to whom it of right belongs, and as to which he is wholly indifferent as between them, he may exhibit a bill of interpleader as against them. The ground of jurisdiction is the apprehension of danger to himself from the doubtful and conflicting claims of the several parties, as between themselves; and the only decree he is entitled to, is, that his bill is properly filed, that he have liberty to pay the money or deliver the property to the party entitled thereto, and be thereafter protected from the several claimants. 3 Dan. Chan. Prac. 1754; Mitchell v. Hayne, 2 Sim. & Stu. 63; Bedell v. Hoffman, 2 Paige 199; Newhall v. Kastens et al., 70 Ill. 159.

Nature of Remedy.

"In an interpleader suit the complainant's office is widely different from that of a complainant in an ordinary suit in equity seeking to avoid a liability or to enforce some right against the defendant. Here the complainant comes into court with the money in his hand to discharge

an acknowledged debt which he is prevented by conflicting claims from paying to either of the claimants with safety to himself. His duty appears to be at an end when he has brought the rival claimants to interplead by filing their answers and putting the suit at issue. It is true, he must show by his bill that each of the parties claims a right, else he makes out no case. Morrill v. Manhattan Life Ins. Co., 183 Ill. 268; Strobil v. Union Central Life Ins. Co., 129 Ill. App. 346.

"The definition of interpleader is not, and cannot be disputed. It is where the plaintiff says, 'I have a fund in my possession in which I claim no personal interest, and to which you, the defendants, set up conflicting claims. Pay me my costs and I will bring the money into court and you shall contest it between yourselves." Wing, Adm'r v. Spaulding, 64 Vt. 86, quoting Cottenham, L. C. in Hoggart v. Cutts, Cr. & Ph. 197.

"A bill in the nature of an interpleader is one in which the complainant asks some relief over and above a mere injunction against suits by the contesting parties, and states facts which entitle him to such relief independent of the fact of the adverse claims of the several defendants." Van Winkle v. Owen, 54 N. J. Eq. 257, citing 2 Dan. Ch. Pr. (5th Ed.) 1571 and Story Eq. Pl. (9th Ed.) § 297 b.

Elements.

The essential elements necessary to be shown in a valid and sufficient bill of interpleader, according to the authorities, are: (1) The same thing, debt or duty must be claimed by both or all the parties against whom the relief is demanded; (2) all their adverse titles or claims must be dependent, or be derived from a common source; (3) the person asking the relief-the complainant-must not have or claim any interest in the subject-matter; and (4) he must have incurred no independent liability to either of the claimants, that is, he must stand perfectly indifferent between them, in the position of a stakeholder. 3 Pomeroy's Equity Juris., sec. 1322; Platte Valley Bank v. National Bank, 155 Ill. 250; Snow v. Ulrich, 126 Ill. App. 495, 496. See also Cogswell v. Armstrong, 77 Ill. 139; Morrill v. Manhattan Life Ins. Co., 183 Ill. 260; Rauch v. Ft. Dearborn Nat. Bank, 223 Ill. 514.

Questions Determined.

On a bill of interpleader the question for determination is, who is entitled to the identical property brought into court, and it is not the province of the court to permit a general accounting between the defendants. O'Connell v. National Surety Co., 185 Ill. App. 459.

INTERPRETATION.

The act of finding out the true sense of any form of words—that is, the sense which their author intended to convey—and of enabling others to derive from them the same idea which the author intended to convey. Village of Rome v. Knox, 14 How. Pr. R. (N. Y.) 272.

INTERPRETATION CLAUSE.

"I think an interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." The Queen v. Pearce (1880), 5 Q. B. D. 386; 49 L. J. M. C. 81, Lush, J.

INTERRUPTION.

It is not every slight or occasional use of the land even by the owner, that will constitute an interruption of the public use. Mere intermission is not interruption. It must appear, that the claimant of the right of way has acquiesced in the interruption in such a manner, as to make the subsequent use merely permissive. The act of an individual in obstructing a highway cannot divest the public of its rights therein, unless the obstruction is submitted to for such a period of time as to raise a fair presumption of abandonment. The claim of a prescriptive right may be defeated by evidence showing that it has been interrupted within the legal period; but this must be an interruption of the right, and not simply an interruption of the use or possession. Township



of Madison v. Gallagher, 159 Ill. 113, 114.

The "Interruption" which defeats a prescriptive right under s. 4, 2 & 3 W. 4, c. 71, is an adverse obstruction by the owner of the servient tenement, not a mere discontinuance of user by the claimant himself. Carr v. Foster, 3 Q. B. 581; 11 L. J. Q. B. 284; 2 G. & D. 753: 6 Jur. 837: Cooper v. Straker, 58 L. J. Ch. 26; 40 Ch. D. 21: and see Bennison v. Cartwright, 33 L. J. Q. B. 137; 5 B. & S. 1: Arkwright v. Gell, 8 L. J. Ex. 201; 5 M. & W. 203: Flight v. Thomas, 8 Cl. & F. 231: Dart, 432.

Interruptions are of two kinds, natural and civil. The first consisted in entering into, and upon immovable things; in taking away such as were movable—civil interruption, was the interposition of a legal claim, in a court of justice. Innerarity v. Heirs of Mims, 1 Ala. 674.

"The words 'interruption,' 'disturbance,' and the like, in the covenant for quiet enjoyment, mean lawful interruptions and disturbances only" (Elph. 483); but the covenant may be so worded as to extend to tortious acts, e. g., if against all "claiming or pretending to claim." Chaplin v. Southgate, 10 Mod. 384; nom. Southgate v. Chaplin, 1 Com. Rep. 230. See Hunt v. Allen, Winch. 25.

INTERRUPTION OF QUIET ENJOYMENT.

"In an action upon this covenant, the plaintiff does not prove his case by merely proving an interruption of his enjoyment; he must further prove that it has been interrupted by an act of the defendant, the covenantor, or by the act of some person authorized by him." Per Lord Esher, M. R., Harrison v. Lord Muncaster [1891] 2 Q. B. 680.

"An interruption of the quiet enjoyment * * must mean an interruption caused either by a direct act of interruption * * *, or by some act the consequence of which it either was foreseen, or ought, if reasonable care had been exercised, to have been foreseen, would be an interruption." Per Lord Esher, M. R., Harrison v. Lord Muncaster [1891] 2 Q. B. 680.

INTERSECTION.

Sidewalks.

The parts of a sidewalk which are called intersections are those portions not directly in front of lots, but which fill out the spaces at the corners of blocks from the lot lines to the curb lines at intersecting streets. There is a space left at such places not directly opposite any lot, and known as an intersection. Hyman v. City of Chicago, 188 Ill. 462; Gage v. City of Chicago, 203 Ill. 30.

Streets.

An ordinance for the paving of a certain east and west street, together with all street intersections within the north and south lines of such street, and for the construction of a combined curb and gutter upon each side of all intersecting streets for certain distances, includes the improvement of those streets only which intersect the street to be paved within the termini of the improvement, and does not include the street whose west curb line is the easternmost terminus of the improvement. Chicago Consol. Trac. Co. v. Oak Park, 225 Ill. 13.

INTERSTATE COMMERCE.

The exchange of property in one state for property in another, its essential characteristic being that it involves the moving of property from one state to another. People v. Chicago I. & L. Ry. Co., 223 Ill. 590.

The sale and delivery of goods or manufactured commodities by a citizen or corporation of another state, in the usual course of business by the usual instrumentalities and means is interstate commerce. Black-Clawson Company v. Carlyle Paper Company, 133 Ill. App. 61; Havens & Geddes Co. v. Diamond, 93 Ill. App. 557; Spry Lumber Co. v. Chappell, 184 Ill. 539; Cooper Manufacturing Co. v. Ferguson, 113 U.S. 727 (739); Robbins v. Taxing Dist., 120 U.S. 489 (492); Brennan v. Titusville, 153 U. S. 289; Caldwell v. North Carolina, 187 U. S. 622; Lehigh Portland Cement Company v. McLean, 149 Ill. App. 363, 364.

Federal Constitution.

The term as understood with reference to clause 3 of section 8 of article 1 of the Constitution of the United States, providing that Congress shall have power "to regulate commerce * * among the several states," consists of intercourse and traffic between the citizens of the states and includes the transportation of persons and property between points in different states. State v. Illinois, etc., R. Co., 246 Ill. 210.

"The negotiation of sales of goods which are in other states, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce." City of Bloomington v. Bourland, 137 Ill. 537.

In an action tried without a jury it is error to refuse to hold a proposition of law that a transportation of goods from Passaic, New Jersey, to Chicago, Illinois, was interstate commerce. Bass v. Erie R. Co., 195 Ill. App. 509.

INTERURBAN RAILWAYS.

"Intermediate between street railways within a municipality, which are intended merely for local convenience and to facilitate travel from point to point within the municipality or the suburban districts immediately adjacent thereto, and the steam railroad, intended for general commerce between the different cities and places without respect to distance, a species of railroad has been developed by the use of electric power which embraces some of the characteristics of both the ordinary street railway and the general steam or commercial railway." 3 Dillon on Mun. Corp.-5th ed.,-sec. 1258. These are generally denominated interurban railways, and are usually held to partake to some extent of the characteristics of both street railways and commercial railroads. In cities and towns they resemble street railways in most respects. In the country, in recent years, they are constructed on road-beds similar to those of steam railroads, and it is frequently stated by the authorities that they are becoming more and more like commercial railroads, many of them carrying mail, express and

light freight and some of them heavy freight. Booth on Street Railroads,-2d ed.,-sec. 431; Baldwin on American Railroad Law, sec. 6. Interurban electric roads, as that term is generally used, might well be regarded as a third or distinct class of railroads. 1 Lewis on Eminent Domain,-3d ed.,-sec. 150. In Cincinnati Electric Railroad Co. v. Lohe, 68 Ohio St. 101, it was held that an interurban railroad, though classed as a street railway by the statutes of that state, should have applied to it, in its operation outside of municipalities, similar rules of law as applied to steam or commercial railroads under like circumstances. McNab v. United Elevated Railroad Co., 94 Md. 719, it was held that such street railroads as lie in the open country must in many respects be operated as if they were commercial railroads and corresponding precautions taken. Hartzell v. A., G. & St. L. Trac. Co., 263 Ill. 207, 208.

INTERVENE.

To intervene means to come between; and when it is said that a day must intervene between two other days, the meaning can not be otherwise than that it must come between the two days mentionedthat it must fully elapse between the two days mentioned. A body can not possibly intervene or come between two other bodies, and at the same time occupy wholly or partially the space occupied by either of the other bodies. The error of the proposition that, in computing the ten days which must intervene between the last day of the term at which the judgment was rendered and the first day of the term of this court, such first day is to be included, is demonstrable. The legislature clearly intended that some time should intervene. Now suppose the statute had provided that only one day should intervene between the times mentioned, and that the last day of the term of the trial court should be the 7th, and the first day of the next term of the Appellate Court the 8th of the month; then, applying the rule that, in computing the time, the first day of the Appellate Court term is to be counted, we would have a day intervening in fact. We are of opinion that

the statute is so plain as to leave no room for construction, and that ten full days must intervene between the last day of the term at which the judgment was rendered and the sitting of the court to which the appeal is taken, and that the first day of the session of the Appellate Court must be excluded in the computation of the ten days. Coleman v. Keenan, 76 Ill. App. 317, 318.

The word "intervened" as used in d. 110, sec. 73, relative to the filing of the record where "ten days, and not twenty days, shall have intervened," between the adjournment of the trial court and the convening of the Appellate Court, is to be construed as excluding the day upon which the time begins to run and including the day to which it should run. Chicago, B. & Q. R. Co. v. Evans, 39 Ill. App. 262.

Under the Attachment Act requiring that 60 days intervene between the first publication of notice and the term of court, the day on which the first notice was inserted in the newspaper should be excluded, and the day on which the term commenced included. Vairin v. Edmonson, 5 Gil. 270; Forsyth v. Warren, 62 Ill. 71.

INTERVENING EFFICIENT CAUSE.

It is said in Pullman Palace Car Co. v. Laack, 143 Ill. 261: "An intervening efficient cause is a new and independent force which breaks the causal connection between the original wrong and the injury, and itself becomes the direct and immediate, that is, the proximate cause of an injury." Morris v. Stanfield, 81 III. App. 272; C. & E. I. R. R. Co. v. Mochell, 96 Ill. App. 183; Yunkes v. Latrobe, etc., Co., 131 Ill. App. 297, to other cases cited. Also Pullman, etc., Co. v. Laack, 143 Ill. App. 242; Wabash R. Co. v. Coker, 81 Ill. App. 660; Griffin v. R. Co., 101 Ill. App. 284; Strojny v. Griffin, etc., Co., 116 Ill. App. 552; Chicago, etc., Co. v. Newmiller, 116 Ill. App. 631; Milostan v. Chicago, 148 Ill. App. 542.

INTERVENTION.

An intervention implies a suit pending between parties in which another applies to be heard. After a cause has been heard and determined between the parties there can be no intervention by a third person. Whatever rights another may then have in the subject matter of the controversy must be enforced by an original proceeding. Haase v. Haase, 261 Ill.

The right of intervention has been defined to be: "The admission, by leave of the court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings." 17 Am. & Eng. Ency. of Law,-2d ed.,-180. In Marsh v. Green, 79 Ill. 385, the court said: "As we understand the modern practice, any person feeling that he has an interest in the litigation may apply to the court and be permitted to intervene and become a party and have his rights passed upon on the hearing, and the court will permit him to become such party on a proper showing. He would, of course, not be permitted to intermeddle when he had no substantial interest in the subject matter of the suit." And in Shannahan v. Stevens, 139 Ill. 428, Justice Scholfield, rendering the opinion, said: "Patrick Shannahan having the right to be made a party to the bill, necessarily retained the right to move the court to become such upon the record at any time while the record was within the control of the court." Wightman v. Yaryan Co., 217 Ill. 376, 377.

INTESTATE LAWS.

Those laws of the state which govern the devolution of estates of persons dying intestate and include all rules of the common law in force in this state. People v. Forsyth, 273 Ill. 141; People v. Richardson, 269 Ill. 277; Billings v. People, 189 Ill. 472.

The expression "intestate laws," used in section 1 of the act of 1909 (J. & A. \P 9597), known as the Inheritance Tax Act, includes all statutes applicable to

such estates. People v. Forsyth, 273 Ill. 141; People v. Richardson, 269 Ill. 277.

Dower Act.

The expression "intestate laws," used in section 1 of the act of 1909 (J. & A. ¶ 9597), known as the Inheritance Tax Act, includes the Dower Act (J. & A. ¶ 4237 et seq.). People v. Forsyth, 273 Ill. 142; Billings v. People, 189 Ill. 480.

Escheats Act.

The expression "intestate laws," used in section 1 of the act of 1909 (J. & A. ¶ 9597), known as the Inheritance Tax Act, includes the Escheats Act (J. & A. ¶ 5476 et seq.). People v. Richardson, 269 Ill. 277.

INTIMACY.

"The word 'intimacy' means nothing more than close and familiar acquaintance." McCarty v. Coffin, 157 Mass. (1892) 478.

INTIMIDATION.

Intimidation and coercion are relative terms. What would put in fear a timid girl or weak woman or man might not terrorize the strong and resolute. All are alike entitled to the protection of the Law. Doremus v. Hennessy, 176 Ill. 608.

No persons, individually or by combination, have the right to directly or indirectly interfere or disturb another in his lawful business or occupation, or to threaten to do so, for the sake of compelling him to do some act which, in his judgment, his own interest does not require. It is clear that it is unlawful and actionable for one man, from unlawful motives, to interfere with another's trade by fraud or misrepresentation, or by molesting his customers or those who would be customers, or by preventing others from working for him or causing them to leave his employ by fraud or misrepresentation or physical or moral intimidation or persuasion, with an intent to inflict an injury which causes loss. Franklin Union v. The People, 220 Ill. 380.

Intimidation includes not only a threat

of bodily harm but also serious annoyance and damage. Carter, J., dissenting opinion Kemp v. Division No. 241, 255 Ill. 241.

Persuasion and entreaty may be used in such a way as to constitute intimidation. Carter, J., dissenting opinion Kemp v. Division No. 241, 255 Ill. 241.

"Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be moral intimidation which is illegal. Patrolling or picketing under the circumstances stated in the report, has elements of intimidation." Vegelahn v. Gunter, 167 Mass. 92, citing Sherry v. Perkins, 147 Mass. 212; Regina v. Druitt, 10 Cox C. C. 592; Regina v. Hibbert, 13 Cox C. C. 82; Regina v. Bauld, 13 Cox C. C. 282.

"'Intimidate' is not * * * a term of art." * * * To tell an employer that if he employs workmen of a certain sort, the workmen of another sort in his employ will be told to leave him, and to tell the men, when the employer will not give way, to 'leave their work, use no violence, no immoderate language, but quietly cease to work and go home' is certainly not intimidation within" the meaning of a statute imposing penalties, on conviction, on every person who, with a view to compel another to abstain from doing or to do any act which such other person has a right to do or abstain from doing intimidates such other person. Neither is a communication to a workman by his fellow-workman unaccompanied by any threats of violence or other outrage, to the effect that his fellow-workmen have resolved to strike unless he will consent to join their Society, such communication being also made to the manager of the works. Connor v. Kent [1891] 2 Q. B. 545.

"Intimidation * * * is constructive force. As force in our definition is the same with the violence of the common law definition, so intimidation in ours is synonymous with putting in fear in the common law definition. Putting in fear is the meaning of intimidation. To

intimidate is to make fearful—to inspire with fear." Long v. State, 12 Ga. 320.

INTO.

The employment of a Humber pilot is not compulsory upon a vessel which is being towed from one dock to another in the port of Hull, as it is not, under such circumstances, passing "into or out of" the port within s. 22, Hull Pilot Act, 2 & 3 W. 4, c. cv. The Maria, L. R. 1 A. & E. 358.

INTO COURT.

The words "into court," in connection with the surrender of his principal by the bail signifying a delivery to the officers of the court who are under the control of the court and can take custody of the principal under the direction of the court. Converse v. Washburn, 43 Vermont, 132.

INTOXICATE.

See also Intemperance.

To become inebriated or drunk. Mullinix v. People, 76 Ill. 213.

INTOXICATING LIQUOR.

Statutory Definition.

The expression "intoxicating liquor," as used in the Dramshop Act, includes all distilled, spirituous, vinous, fermented and malt liquors. Dramshop Act; People v. McBride, 234 Ill. 170.

Culinary Preparation.

An article generally and properly used for culinary purposes, recognized, and a formula prescribed for its preparation as such in standard dispensatories prior to the enactment of the Dramshop Act, and not then known and classed among liquors used as a beverage is not "intoxicating liquor" within the meaning of such act, because it contains alcohol, and may, and in fact does, produce intoxication. Holcomb v. People, 49 Ill. App. 74.

Cider.

The object of the Legislature in declaring that spirituous, vinous and malt liquors are intoxicating, was to render it unnecessary to prove it on the trial. Cider not being a fluid belonging to either of the classes mentioned, is not intoxicating by legislative enactment, and in a prosecution for selling cider as an intoxicating liquor, proof should be made that such fluid is intoxicating. Feldman v. Morrison, 1 Ill. App. 462.

Cider is "intoxicating liquor," within the meaning of section 2 of the Dramshop Act, if it be intoxicating. Hewitt v. People, 186 Ill. 342.

Extract of Lemon.

Extract of lemon, used as a culinary preparation, is not "intoxicating liquor" within the meaning of the Dramshop Act, although it contains alcohol in sufficient quantities to produce, and does produce, intoxication, where there is no evidence that the sales of the preparation were shifts or devices to evade the act. Holcomb v. People, 49 Ill. App. 74.

"Pop."

"Pop," a malt liquor of intoxicating quality, tasting like poor beer, and drawn from kegs like beer kegs, is "intoxicating liquor," within the meaning of the Dramshop Act. Godfreidson v. People, 88 Ill. 286.

INTOXICATION.

In an action under section 9 of the Dramshop Act it is not error to refuse an instruction that the word "intoxication," as used in that section means "excited to frenzy." Smith v. People, 141 Iil. 453.

"We know of no terms which could safely be incorporated in an instruction defining intoxication. It certainly will not be claimed that a plaintiff, in an action like this, as a condition to the right of recovery must prove that the person was intoxicated to the degree of insensibility or incapacity to take care of himself or guard against danger. It is well known that at least some persons under the influence of intoxicating liquors are reckless with regard to their own safety, while others become insensible to danger and are incapable of self-protection. We think when the court informed this jury

that the evidence must prove that the deceased was intoxicated, it did all that the law required." Shorb v. Webber, 188 Ill. 132.

INTRA VIRES.

See also Ultra Vires.

An act which might be done by the managing board of a corporation or by a majority of the stockholders in meeting assembled. The act is intra vires although done by the managing board of directors, and in opposition to the will of a majority of the stockholders. Bradbury v. Waukegan, etc., Co., 113 Ill. App. 609.

INTRINSIC FRAUD.

"Intrinsic fraud," as applied to a bill to impeach a judgment for fraud, is fraud which is confined to matters in evidence at the trial resulting in the judgment complained of. McKechney v. Chicago, 194 Ill. App. 542.

INTRUSION.

Intrusion or usurpation, and trespass, are not synonymous terms. People v. Walsh, 96 Ill. 255.

Intrusion is, at the common law, one of the modes of ouster of the freehold, and is defined to be "an entry by a stranger after a particular estate of freehold is determined before him in reversion or remainder; as when a tenant for life dieth seized of certain lands and tenements, and a stranger cometh thereon, after such death of the tenant, and before any entry of him in reversion or remainder." 3 Ch. Bl. 169. Trespass is an entry on another's ground without lawful authority, and doing some damage however inconsiderable to his real property. Ib. 209. This broad distinction does not exist under our statute dispensing with livery of seizin; but the only distinction apparent to my mind between an intrusion and a trespass is, that the former implies an unlawful possession of lands, while the latter may amount to a mere entry upon land without retaining possession, but doing some damage. Hulick v. Scovil, 9 Ill. 170, 171. Intrusion is when the ancestor died seized of any estate of inheritance expectant upon an estate for life, and then the tenant for life dieth, and between the death and the entry of the heir a stranger doth interpose himself and intrude. Co. Litt. 277 a.

INTRUSTED.

"It might be said that goods given, as these were, to one to be delivered by him to parties who he represented had purchased them, were not intrusted to him for sale, but as an agent for delivery merely. But however that may be, we do not think that the statute [providing that in order to protect a bona fide pledgee the goods in the hands of an agent must have been intrusted to the agent to sell in the ordinary course of business] applies when goods or merchandise have been procured by the agent or factor to be intrusted to him for delivery under what purport to be conditional contracts of sale, in consequence of what in law constitutes a larceny of them on his part. In such a case the goods cannot be said to have been intrusted to him for sale in any manner within the fair meaning of those words. It would be a contradiction in terms to say that goods are intrusted for sale to one who steals them." Prentice & Co. v. Page, 164 Mass. 276, citing Stollenwerck v. Thatcher, 115 Mass. 224. Thatcher v. Moors, 134 Mass. 156. Rodliff v. Dollinger, 141 Mass. 1. Dows v. Exchange Nat. Bank, 91 U. S. 618. Soltau v. Gerdau, 119 N. Y. 380.

"The sole question of law is whether a man employed on a salary to go out and sell goods which are put into his manual possession is a person intrusted with merchandise and having authority to sell the same within the meaning of this section [Pub. Sts. c. 71, § 3]. We think that he If Buitekan was the servant of the plaintiffs, he was also their agent, going about and selling merchandise put into his hands for that purpose. He was employed to make sales of merchandise of a kind which is carried upon the person at places other than the place of business of the plaintiffs. The language of the Pub. Sts. c. 71, § 3, is very broad, and includes any person intrusted with merchandise, and having authority to sell or consign the same. We think that such an agent as Buitekan is intrusted with merchandise, within the meaning of this section, when it is delivered to him to carry away with authority to sell it to such persons as he chooses." Cairns v. Page, 165 Mass. (1896) 552, citing Prentice Co. v. Page, 164 Mass. 276. Thatcher v. Moors, 134 Mass. 156.

INVALIDATE.

One of the definitions given by Webster, of the word "invalidate," is, to weaken or lessen the force of. Hartford Fire Ins. Co. v. Olcott, 97 Ill. 459.

INVEIGLE.

"To inveigle, in a legal sense, is to induce a party to come within the jurisdiction of the court, by some scheme, subterfuge, fraud, trick, device, or misrepresentation, that he may be served with process." Campbell v. Hudson, 106 Mich. 525, quoting Higgins v. Dewey, 13 N. Y. Supp. 570.

INVENTED WORD.

A word that exists in no language and has had no existence—so far as evidence can go—before it was used for the purposes of Registration under a statute providing for the registration of an "invented word" as a trade mark by the person who then had it registered is an "invented word" within the meaning of that statute. In re Densham's Trademark [1895] 2 Ch. 176.

INVENTION.

"The invention in this case did not consist in the discovery of a new application of a natural force, like that, for instance, of the telegraph or the telephone, or the making of iron rolls; (see McClurg v. Kingsland, 1 How. 202; O'Reilley v. Morse, 15 How. 62; Burr v. Duryee, 1 Wall. 531, 568; Telephone Cases, 126 U. S. 533;) but was for the combination in a new form of well known

mechanical devices, which produced the desired result in a cheaper and better manner than it had been produced before. It was the machine as a whole which constituted the invention and was the subject of the patent. If it be admitted that an invention of such a character may exist without being presented in some physical form or description, at least it must appear, in order to amount to an invention, that the inventor has contemplated his idea as a perfected and practicable arrangement." Morton, J., in Lamson v. Martin, 159 Mass. (1893), 557, citing Loom Co. v. Higgins, 105 U. 8. 580, 593.

A discovery is not necessarily an invention. A discovery of unknown effects producible by a known machine is not a patentable invention. A patentable invention must either be something which will produce a new and useful thing or result, or something which is a new and useful method of producing an old thing or result. A discovery how to use a known thing for an unknown useful purpose is only a patentable invention if there is novelty in the mode of using it, as distinguished from novelty of purpose, or if any new modification of the thing, or any new appliance is necessary for using it for its new purpose, and if such mode of user, or modification, or appliance involves any appreciable merit. Per Lindley, L. J., in Lane Fox v. Kensington, etc., Electric Lighting (1892), 3 Ch. 424, citing Harwood v. Great, etc., R. Co., 11 H. L. C. 654.

INVENTORY.

See also Schedule.

A list or catalogue of property, merely, without attempt to describe the same in detail. Chicago, etc., R. Co. v. People, 217 Ill. 169.

An "inventory" is a detailed list of goods, enumerating them with reasonable particularity according to the well understood usage of business men; and the word is so used in s. 4, Bills of Sale Act, 1882. Witt v. Banner, 20 Q. B. D. 114; 57 L. J. Q. B. 141; 58 L. T. 34;

36 W. R. 115; 3 Times Rep. 759: Carpenter v. Deen, 23 Q. B. D. 566; 33 S. J. 590; 5 Times Rep. 647.

INVESTMENT.

The putting out of money on interest. People v. Utica Ins. Co., 15 John. (N. Y.) 392.

INVITATION.

"An invitation exists where some benefit accrues or is supposed to accrue to the one who extends the invitation." Northwestern El. R. Co. v. O'Malley, 107 Ill. App. 599; Rousch v. Oblong Gas Co., 179 Ill. App. 604.

INVOICE.

Signifies only a written account of the particulars of merchandise shipped to a purchaser, factor or consignee, with the value or prices and charges annexed. Pipes v. Norton, 47 Miss. 76.

Invoice is a document transmitted from the shipper to his factor or consignee, containing the particulars and prices of the goods shipped. Leroy v. United Ins. Co., 7 John. (N. Y.) 354.

An invoice of goods sometimes means the goods themselves, and invoice price or cost sometimes means the prime price or cost of goods, although there is no invoice in fact. Sturm v. Williams, 6 Jones & Spencer (N. Y.) 342.

INVOLUNTARY.

See also Nonsuit.

Manslaughter.

A homicide where a man doing an unlawful act not amounting to a felony by accident kills another, or where by culpable neglect of duty he occasions another's death. Mutual, etc., Co. v. Laurence, 8 Ill. App. 492.

The killing of a human being without any intent to do so, in the commission of an unlawful act, or a lawful act, which might probably produce such a consequence, in an unlawful manner. Criminal Code, div. 1, § 145; People v. Mighell, 254 Ill. 59; Mutual, etc., Co. v. Laurence, 8 Ill. App. 492.

Nonsuit.

A nonsuit is where a plaintiff, on being called when the case is before the court for trial, neglects to appear or where he has given no evidence upon which the jury could find a verdict. Holmes v. Chicago, etc., R. Co., 94 Ill. 443; Boyce v. Snow, 187 Ill. 184; Boyce v. Snow, 88 Ill. App. 402; Herring v. Poritz, 6 Ill. App. 211.

A nonsuit allowed on the motion of the defendant and against the plaintiff's will. Koch v. Sheppard, 223 Ill. 174; Gibbs v. Crane, etc., Co., 180 Ill. 191.

Payment.

A payment of money upon an illegal or unjust demand, where a party is advised of all the facts, can only be considered involuntary when it is made to secure the release of person or property from detention, or where the payee is armed with apparent authority to seize upon one or the other and to prevent this the payment is made. Lamson v. Boyden, 57 Ill. App. 240.

"The compulsion or duress which will render a payment of taxes involuntary must in general consist of some actual or threatened exercise of power possessed, or believed to be possessed, by the party exacting or receiving the payment over the person or property of another, from which the latter has no means or reasonable means of immediate relief except by making payment." 2 Dillon on Municipal Corporations (4th Ed.), section 943. City of Chicago v. Klinkert, 94 Ill. App. 526.

"What shall constitute the compulsion or coercion which the law will recognize as sufficient to render the payments involuntary, may often be a question of difficulty. It may be said in general that there must be some actual or threatened exercise of power, possessed or supposed to be possessed by the party exacting or receiving the payment, from which the latter has no other means of immediate relief." Lehigh Coal & Nav. Co. v. Brown (1882), 100 Pa. St. 346; Brumagin v.

Tillinghast, 18 Cal. 272; Garrison v. Tillinghast, 18 Cal. 407; Bucknall v. Story, 46 Cal. 598.

INVOLVING.

In General.

The word "involving," as used in the statute, has, as we think, the meaning of the word "requiring." Leddy v. Board of Education of School Dist. No. 99, 160 Ill. App. 190.

Franchise.

In People v. Holtz, 92 Ill. 426, in discussing the meaning of the word "franchise" as applied to appeals from trial courts to the supreme court, it is said: "If the constitutional convention and the General Assembly used the term according to its strict legal import,—and we must presume they did,—then in this country it can only embrace corporations, ferries, bridges, wharfs and the like where tolls are authorized to be taken, and we may add the elective franchise, as it is granted by the constitution to a portion of the people to elect their officers." United States v. Hrasky, 240 Ill. 562-563.

A franchise is "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. § 8655), formerly section 89 of the Practice Act, relating to appeals and writs of error directly to the supreme court, only where the existence of the incorporation or franchise or the right to exercise the privileges of a franchise is the question at issue in the case. Rostad v. Chicago, etc., Co., 211 Ill. 248.

Construction of Charter.

A franchise is not "involved," within the meaning of the Constitution of 1870, and of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 89 of the Practice Act) relating to appeals and writs of error directly to the supreme court, in an action against a water company for failure to supply a certain pressure of water, whereby, it was alleged, plaintiff's property was destroyed by fire, such action raising merely the question of the proper construction of defendant's charter, and not of the existence or va-

lidity of the corporation, or of the exercise of its franchise. Rostad v. Chicago, etc., Co., 211 III. 249.

- Infringement of Trade-Mark.

A bill to enjoin the infringement of a trade-mark is not a suit "involving a franchise," within the meaning of the Constitution of 1870. Hazelton, etc., v. Hazelton, etc., Co., 137 Ill. 233.

- Right of Eminent Domain.

A franchise is "involved," within the meaning of section 11 of article 6 of the Constitution of 1870, by a proceeding to restrain a railroad company from exercising the right of eminent domain. Chicago & W. I. R. Co. v. Dunbar, 95 III. 580.

Right to Issue Dramshop License.

A franchise is not "involved," within the meaning of section 11 of article 6 of the Constitution of 1870, by an information in the nature of quo warranto against a city to determine its right to grant dramshop licenses. People v. Chicago, 257 Ill. 383. To the same effect see Martens v. People, 186 Ill. 318 (where the proceeding was against the dramshop keeper).

Freehold.

The rule is, that a freehold is involved. within the sense and contemplation of the constitution and the statute, only in cases where either the necessary result of the judgment or decree is that one party gains and the other loses a freehold estate, or where the title to a freehold is so put in issue by the pleadings that the decision of the case necessarily involves a decision of such issue. Sanford v. Kane, 127 Ill. 591; Malaer v. Hudgens, 130 Ill. 225; Chicago, B. & Q. R. Co. v. Watson, 105 Ill. 217; Goodkind v. Bartlett, 136 Ill. 19; Becker v. Fink, 273 Ill. 562; City of Mattoon v. Noyes, 113 Ill. App. 111; Prouty v. Moss, 188 Ill. 85; Village of Dolton v. Dolton, 99 Ill. App. 142; Douglas P. B. Ass'n v. Roberts, 218 Ill. 456; Wessels v. Colebank, 174 Ill. 618; Goodkind v. Bartlett, 136 Ill. 18; Brewster v. Cahill, 81 Ill. App. 629; Daly v. Kohn, 133 Ill. App. 519; Banking Ass'n v. Com. Natl. Bank, 157 Ill. 524; Glos v. Furman. 66 Ill. App. 133; Malaer v. Hudgens, 130 Ill. 225; Van Meter v. Thomas, 153 Ill. 65; Karsten v. Winkelman, 126 Ill. App. 421; MacDonald v. Dexter, 234 Ill. 517; Bartley v. Peoria Park District, 251 Ill. 375, 376; Nevitt v. Woodburn, 175 Ill. 376; Rhoten v. Baker, 193 Ill. 273; Taylor v. Taylor, 223 Ill. 425; Van Meter v. Thomas, 153 Ill. 65; Kellog Newspaper Co. v. Corn Belt Nat. B. & L. Ass'n, 105 Ill. App. 64; McDavid v. Sutton, 104 Ill. App. 627; Parsons v. Millar, 189 Ill. 111; Village of Crete v. Hewes, 168 Ill. 333; Nevitt v. Woodburn, 175 Ill. 381; Goodkind v. Bartlett, 136 Ill. 19; Taylor v. Pierce, 174 Ill. 11; In re Estate of Ross, 220 Ill. 144; Merchants, etc., Co. v. Northern, etc., Co., 245 Ill. 515; Van Tassell v. Wakefield, 214 Ill. 210; Wachsmuth v. Penn, etc., Co., 231 Ill. 31; Hursen v. Hursen, 209 Ill. 467. See also Holinger v. Dickinson, 252 Ill. 125; Chicago v. Rotschild, 212 Ill. 590; Funston v. Hoffman, 232 Ill. 363; Espenscheid v. Bauer, 235 Ill. 175; Biggins v. Lambert, 204 Ill. 144; Ducker v. Wear, 145 Ill. 656; Malaer v. Hudgens, 130 Ill. 228; In Town of Brushy Mound v. McClintock, 146 Ill. 643; Schwartz v. McQuaid, 115 App. 354, 355.

A freehold is not involved, within the meaning of the statute giving an appeal directly to or writ of error directly from this court from or to the trial court, where the litigation may, on certain contingencies, result in the loss of a freehold. but which will not necessarily have that effect, or where the freehold may be directly affected by the judgment or decree unless payment is made, or some act done to arrest the sale of the land, or discharge a lien thereon for the payment of money. In order there should be a right of immediate appeal to or writ of error from this court the title to the freehold must be directly put to issue. Sanford v. Kane. 127 Ill. 591; Malaer et al. v. Hudgens, 130 Ill. 228-229.

A freehold is involved in all cases where the necessary result of the judgment or decree is that one party gains and the other loses a freehold estate, but it is equally clear that a freehold is involved, within the meaning of the consti-

tution and statute, where the title to a freehold is so put in issue by the pleadings that the decision of the case necessarily involves a decision of such issue, although the judgment or decree does not result in one party gaining and the other party losing the estate. Sanford v. Kane, 127 Ill. 591; Parsons v. Millar, 189 Ill. 111; Taylor v. Pierce, 174 Ill. 11; People v. W. Chicago St. R. R. Co., 203 Ill. 551; Crane v. Stafford, 117 Ill. App. 58.

A freehold is never "involved," within the meaning of section 118 of the Practice Act (formerly section 88 of the Practice Act) (J. & A. ¶ 8655) relating to appeals directly to the supreme court, except where the primary object of the suit is the recovery of a freehold estate, the title whereof is directly put in issue, and where the suit, if prosecuted to a final determination, will, by virtue of the judgment or decree rendered therein, as between the parties, result in one gaining and the other losing the estate. Chicago, B. & Q. R. Co. v. Watson, 105 Ill. 222; Bangs v. Brown, 110 Ill. 97; Vose v. Northwestern L. & B. Ass'n, 83 Ill. App. 263.

It is not enough that the freehold be affected, it must be involved,—that is, directly the subject of the litigation,—to give the Supreme Court jurisdiction by appeal directly from the circuit court. Galbraith v. Plasters, 101 Ill. 445.

A freehold is always involved in an action where the title to the land is presented and in issue between the parties.

Monroe v. Van Meter et al., 100 Ill. 351.

If a freehold is not involved in the points assigned for error the appeal must be taken to the appellate court. Fields v. Coker, 161 Ill. 188; Franklin v. Loan & Investment Co., 152 Ill. 345; Prouty v. Moss, 188 Ill. 84; Foote v. Yarlott, 131 Ill. App. 534; Fread v. Fread, 165 Ill. 228; Rhodes v. Rhodes, 172 Ill. 187; Walker v. Pritchard, 121 Ill. 221; Tormohlen v. Walter, 175 Ill. 442; Hutchinson v. Spoehr, 221 Ill. 314.

The question whether an action involves a freehold does not depend on the way in which the action was decided below. Funk v. Fowler, 264 Ill. 23.

— What is a Freehold?

The word "freehold" in the statute relating to appeals and writs of error is used in the sense as defined by the common law. It does not include a mere right to do that which in equity will entitle a party to a freehold. Kirchoff v. Union Mut. Life Ins. Co., 128 Ill. 199; Streator Ind. Tel. Co. v. Interstate Ind. Tel. Co., 142 Ill. App. 191; Piper v. Headlee, 39 Ill. App. 99. See Land Co. et al. v. Peck et al., 112 Ill. 432; Chicago, Burlington and Quincy Railroad Co. v. Watson et al., 105 Ill. 220; McIntyre v. Yates et al., 100 Ill. 475; Kirchoff v. Union Mutual Life Ins. Co., 128 Ill. 203-204.

An estate for life in lands is a freehold estate. Ducker v. The Wear & Boogher Dry Goods Co., 145 Ill. 653; Nevitt v. Woodburn, 175 Ill. 376; Poll v. Cash, 137 Ill. App. 531.

Administrator's Sale.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) relating to appeals and writs of error directly to the supreme court, in an ordinary petition by an administrator to sell real estate. Wachsmuth v. Penn, etc., Co., 231 Ill. 31.

- Clouds on Title.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act) in a bill to remove cloud on title, such clouds consisting of certain certificates of sale for taxes. Gage v. Busse, 94 Ill. 591; Johnson v. McDonald, 196 Ill. 395; First, etc., Bank v. Gibson, 221 Ill. 298. See also Johns v. Boyd, 117 Ill. 339; Blackman v. Preston Bros., 119 Ill. 240; Herdman v. Cooper, 125 Ill. 359; Cook v. Gilmore, 133 Ill. 139; La Fleure v. Seivert, 188 Ill. 525; Brownmark v. Livingston, 190 Ill. 412.

- Creditor's Suits.

A freehold is not "involved" in a suit to subject land to the payment of judgments, within the meaning of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act), relating to appeals or writs of error directly to the supreme court. Chicago, B. & Q. R. Co. v. Watson, 105 Ill. 223.

Involving

A freehold is not "involved," within the meaning of the Constitution of 1870, by a bill in aid of an execution, for the purpose of subjecting real estate to the lien of a judgment, and satisfying the execution, the only question being whether the land is subject to the lien asserted by the complainant. Fairbanks v. Carle, 217 Ill. 138.

- Dower Rights.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act) by a suit involving merely the question whether a widow had an existing inchoate right of dower. Goodkind v. Bartlett, 136 Ill. 20.

- Highways.

A freehold is "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) relating to appeals and writs of error directly to the Supreme Court, in an action where the issue was as to the existence of a public highway, which is a perpetual easement and a freehold estate. Taylor v. Pierce, 174 Ill. 11; Bennett v. Millard, 239 Ill. 333; Roloson v. Barnett, 243 Ill. 132.

An action to determine the boundary lines of a road which is admitted to exist does not involve a freehold within the meaning of the Constitution of 1870. Posey v. Commissioners of Highways, 264 Ill. 20.

— Homestead Rights.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, by a bill to set aside a sale of land under execution on the ground that the land was complainant's homestead. Galbraith v. Plasters, 101 Ill. 445.

- Liens.

A bill in chancery to establish a vendor's lien upon real estate sold to defendant does not involve a freehold within the meaning of the Constitution of 1870. Czelusnik v. Wantroba, 256 Ill. 513.

The rule is recognized that a freehold within the meaning of the statute will never be regarded as involved where the primary object of the litigation is to enforce some lien or charge against an estate, rather than to recover the estate itself, as is always the case with a creditor's bill or a proceeding to foreclose a mortgage and the like. In other words, where the freehold only is collaterally drawn in question as a mere means of accomplishing some ulterior object, and it is within the power of the owner to relieve it from the threatened danger, the statute does not apply. On the other hand, where the object of the suit is to recover a freehold estate, and not merely to enforce some lien or charge upon it, and by virtue of the decree or judgment to be rendered therein one party will necessarily lose and the other will gain a freehold estate, and it is not within the power of any one interested in the litigation other than the plaintiff, to defeat the operation of such judgment or decree by the payment of a sum of money or the performance of some other collateral, the statute applies, and a freehold will be regarded as involved. Hollingsworth v. Koons, 13 Ill. App. 162.

A freehold is not "involved," within the meaning of section 11 of article 6 of the Constitution of 1870, and of section 118 of the Practice Act (J. & A. § 8655), relating to appeals and writs of error directly to the supreme court, where the question of title is only incidental to the chief question, as for example, where such question is the priority of liens. Becker v. Fink, 273 Ill. 563.

Mortgage Foreclosures.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, in a bill to foreclose a mortgage. Becker v. Fink, 273 Ill. 562; Kronenberger v. Heinemann, 190 Ill. 19; First, etc.,

Bank v. Gibson, 221 Ill. 298; Pinneo v. Knox, 100 Ill. 471; Beach v. Peabody, 188 Ill. 77; Van Tassell v. Wakefield, 214 Ill. 210; Foote v. Marggraf, 233 Ill. 49; Reagan v. Hooley, 247 Ill. 430; Holinger v. Dickinson, 252 Ill. 125.

A freehold is "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, where the validity of a master's deed under foreclosure is at issue in a proceeding in chancery. Smith v. Jackson, 153 Ill. 405.

A freehold is "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, in a bill to set aside a foreclosure deed and to redeem. Sanford v. Kane, 127 Ill. 594.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) relating to appeals and writs of error directly to the supreme court, in a petition to set aside a certificate of purchase issued by a master in chancery in a bill to foreclose a mortgage. Kronenberger v. Heinemann, 190 Ill. 18.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, in a bill of review to set aside a decree of foreclosure on the ground of fraud. Wilkinson v. Gage, 133 Ill. 138.

- Bill to Redeem.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶ 8655) (formerly section 88 of the Practice Act) relating to appeals and writs of error directly to the supreme court, in a bill to redeem under a conveyance claimed to be a mortgage. Kirchoff v. Union, etc., Co., 128 Ill. 203; Eddleman v. Fasig, 218 Ill. 340.

The question of the right to redeem under a conveyance claimed to be a mortgage does not, however, involve a freehold, for the reason that a decree in favor of the person claiming the right of redemption would only establish his right to redeem,—a right of which he might or might not avail himself. A gain or loss of a freehold would not be the necessary result of such decree, but would depend upon the subsequent acts of the party whose right to redeem was determined, which he might or might not perform. The word "freehold" does not include the mere right to do that which in equity will entitle a party to a freehold. Kirchoff v. Union Mutual Life Ins. Co., 128 Ill. 199; Ryan v. Sanford, 133 Ill. 291; Reagan v. Hooley, 247 Ill. 430; Peterson v. Peterson, 264 Ill. 123.

- Absolute Deed Claimed to be Mortgage.

A bill to determine whether a quitclaim deed admittedly executed was an absolute deed or a mere security for financial obligations of the grantor does not involve a freehold within the meaning of the Constitution of 1870. Funk v. Fowler, 264 Ill. 23.

- Partition.

A freehold is involved, within the meaning of the Constitution of 1870, in a partition proceeding. Bangs v. Brown, 110 Ill. 97; Wilson v. Dresser, 152 Ill. 387; Schwartz v. Ritter, 186 Ill. 209; Hutchinson v. Spoehr, 221 Ill. 314.

A freehold is not involved, within the meaning of the Constitution of 1870, where, on appeal from a decree in a bill in chancery for partition, the only question was as to the lien of appellants on the property in question for taxes paid by them. Schneider v. McDonald, 255 Ill. 42.

If an appeal in a partition suit involves a decision as to a freehold the appeal must be taken to the supreme court; but the appeal may involve other questions than a freehold, such as an accounting between tenants in common or liens upon the shares of the parties, and if the appeal relates only to such questions and not to the ownership of the freehold, the appeal should be taken to the appellate

court. Malaer v. Hudgens, 130 Ill. 225; Fields v. Coker, 161 Ill. 186; Hutchinson v. Spoehr, 221 Ill. 314.

- Perpetual Easement.

A suit to determine the existence or non existence of a perpetual easement is an action "involving a freehold" within the meaning of the Constitution of 1870. Funston v. Hoffman, 232 Ill. 363.

— Plea of Liberum Tenementum.

A plea of liberum tenementum, in an action of quare clausum fregit, if put in issue by the replication, involves a free-hold. Piper v. Connelly, 108 Ill. 650.

— Question of Possession.

No question of freehold is involved where the only question litigated is that of the right to possession. Kerr v. Brawley, 193 Ill. 207.

- Setting Aside Deed.

A freehold is "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) relating to appeals and writs of error directly to the supreme court, in a bill to set aside and cancel a deed on the ground of fraud and conspiracy. Hursen v. Hursen, 209 Ill. 467; Hand v. Waddell, 167 Ill. 402. See also Nichols v. Otto, 132 Ill. 91; Smith v. Patton, 97 Ill. App. 183.

- Suit for Accounting.

A freehold is not "involved," within the meaning of section 118 of the Practice Act (J. & A. ¶ 8655) relating to appeals and writs of error directly to the supreme court, by a suit in chancery against a trustee for an accounting, although such trustee has been removed from office and the decree requires him to transfer to a new trustee certain land which he bid in at a foreclosure sale of a mortgage held by him as trustee, such real estate being regarded in equity as personalty or money in his hands, being the substitute for the mortgage and note held by him. Nevitt v. Woodburn, 175 III. 381.

A freehold is not involved in a bill to require an accounting and compel the

conveyance of property upon the payment of the amount due. Schoendubee v. International Building Loan and Investment Union, 183 Ill. 139; Holinger v. Dickinson, 252 Ill. 125.

Suits Involving Wills.

A bill to set aside a will devising real estate involves a freehold within the meaning of the Constitution of 1870. Peterson v. Guttormsen, 125 Ill. App. 29.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) relating to appeals and writs of error directly to the supreme court, in a bill for a construction of a will involving certain investments by trustees in real estate, since the title of the trustees to the real estate would not be affected even if the investments were held improper. Merchants, etc., Co. v. Northern, etc., Co., 245 Ill. 515.

A freehold is involved in the contest of a will devising real estate in fee. Brace v. Black, 125 Ill. 37.

Tax Deeds.

A freehold is not "involved," within the meaning of the Constitution of 1870 and of section 118 of the Practice Act (J. & A. ¶8655) relating to appeals and writs of error directly to the supreme court, in a bill to enjoin the purchaser at a tax sale from applying for and the county clerk from issuing a tax deed for the premises bought at the sale. Glos v. Sanitary District, 224 Ill. 273.

Validity of Statute.

The validity of a statute is "involved," within the meaning of section 118 of the Practice Act (J. & A. ¶8655) (formerly section 88 of the Practice Act) only where the primary inquiry in the case sought to be taken directly to the supreme court under the section is the validity of a statute as originally passed. Cairo v. Bross, 99 Ill. 524.

IRON.

In a marine insurance was this clause,

cargoes, exceeding the net register tonnage, across the Atlantic;"-held, that steel was included in the word "iron." Hart v. Standard Mar. Insrce., 22 Q. B. D. 499; 58 L. J. Q. B. 284; 60 L. T. 649.

IRON PYRITES.

Where a defendant, under a grant from plaintiff, has removed certain coal, and in removing such coal necessarily, likewise, removed what is known as "iron pyrites" the measure of damages in an action for the conversion of such iron pyrites is the value of the coal at the mouth of the pit, less the cost of the digging of such iron pyrites and of separating it from merchantable coal. Smoot v. Com. Coal Co., 114 Ill. App. 520.

IRREGULARITY.

The failure to observe that particular course of proceeding which, conformably with the practice of the court, ought to have been observed in the case. Kelly v. People, 115 Ill. 590.

In Macnamara on Nullities and Irregularities in Law, p. 20, it is said that "an irregularity is a formal but a nullity is a substantial defect. One applies chiefly to the manner, the other to the matter or merits of the proceeding; the former is voidable, the latter absolutely void;" and it is said that "it may be laid down as a certain rule that whenever there is any doubt upon the matter it will always be safer to treat the defect as an irregularity rather than as a nullity," that "an irregularity may be waived." Pennsylvania Co. v. Barton, 130 Ill. App. 588.

The want of adherence to some prescribed rule or proceeding. And it consists in omitting to do something that is necessary for the due and orderly conducting of a suit or ordering it in an unseasonable time, or improper manner. Bowman v. Tallman, 2 Robertson (N. Y.) 634.

IRREPARABLE INJURY.

"By irreparable injury is not meant such injury as is beyond the possibility tion in damages, nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other; and because it is so large on the one hand or so small on the other, is of such constant and frequent recurrence, that no fair or reasonable redress can be had therefor in a court of law." Wahle v. Reinbach, 76 Ill. 326; Field v. Barling, 149 Ill. 570; C. G. Ry. Co. v. C., B. & Q. R. R. Co., 181 Ill. 611; Drainage Comrs. v. Drainage Comrs., 246 Ill. 534; Stroup v. Chalcraft, 52 Ill. App. 615.

An injury is irreparable either in its own nature, as where the party injured cannot adequately be compensated therefor in damages, or when the damages which may result therefrom cannot be measured by any certain pecuniary standard, or when it appears that the party who must respond is insolvent, and for that reason incapable of responding in damages. Lloyd v. Catlin, etc., Co., 210 Ill. 464; Cleveland v. Martin, 218 Ill. 87.

"Irreparable injury," as used in the law of injunctions, does not necessarily mean "that the injury is beyond the possibility of compensation in damages, nor that it must be very great; and the fact that no actual damages can be proved, so that in an action at law the jury could award nominal damages, only, often furnishes the very best reason why a court of equity should interfere in a case where the nuisance is a continuous one." Newell v. Sass, 142 Ill. 116; Espenscheid v. Bauer, 235 Ill. 176; Feitler v. Dobbins, 263 Ill. 81, 82; Martin v. Cleveland, 119 App. 522.

IRRESISTIBLE FORCE.

A term applied to such an interposition of human agency as is, from its nature and power, absolutely uncontrollable; as, the inroads of a hostile army. Story, Bailm. § 25; Lois des Batim. pt. 2, c. 2, § 1.

IRRIGATION.

"The ordinary definition in our language is to water lands, whether by chan-

nels, by flooding, or simply by sprinkling." Charnock v. Higuerra, 111 Cal. 476.

IS.

A certificate dated July 19, 1838, that a commissioner of the supreme court of the state of New York "is" such commissioner does not show that he was such commissioner on July 18, 1838, when a deed was acknowledged before him as such commissioner. Hilgendorf v. Ostrom, 46 Ill. App. 470.

"Is of full age," in s. 6, Rep. People Act, 1867 (30 & 31 V. c. 102), means being of full age at or before the end of the year of qualification. Hargreaves v. Hopper, 45 L. J. C. P. 105; 1 C. P. D. 195. In this connection "is" was read "was."

IS HELD AND FIRMLY BOUND.

There is no difference in their legal effect between the words "is held and firmly bound" and the words "owes and is indebted." Shattuck v. The People, 5 Ill. 480.

ISSUABLE TERMS.

Hilary and Trinity terms are so called from the making up of the issues, during those terms, for the assizes, that they may be tried by the judges, who generally go on circuit to try such issues after these two terms. But for town causes all four terms are issuable. 3 Sharswood, Bl. Comm. 350; 1 Tidd, Prac. 121.

ISSUE.

The word "issue," as a general thing, means lineal descendants indefinitely. But whether it means descendants generally, or merely children, will depend upon the intention of the testator, as indicated by the context in which it occurs, or by the language of the entire will. Hence, the word "issue" is said to be an ambiguous term. The word "issue" as used in the will will be construed as syn-

onymous with "children," when such appears from all the language used to have been the intention of the testator. When the word "issue" in one part of a limitation is explained by the word "children" in another, it will be inferred that the testator intended the word "issue" to denote children. It is only where the word "issue" is not qualified or explained, that it is construed to include grandchildren as well as children. But words and expressions are to be construed naturally and to be taken in their ordinary, proper and common acceptation, unless it clearly appears in the will that they are used in a different sense. According to the popular signification of the word "children," it denotes the immediate offspring, and will not be construed to mean grandchildren, unless a strong case of intention or necessary implication requires it. Jarman, in his work on Wills, in discussing the question whether the word "issue" shall be construed as synonymous with children, or as admitting descendants of every degree, says: "The latter, it is presumed, will be its construction in the absence of a restraining context. If the testator annex to the gift to the issue words of explanation, indicating that he used the term 'issue' in a special and limited sense, it is of course restricted to that sense." He then cites cases where issue is explained to mean children. 2 Jarman on Wills,-Bigelow's 5th ed.,-p. 440. Chancellor Kent says: "A power to appoint to children will not authorize an appointment to grandchildren. This is a settled rule." And, in a note to the text which contains the last quotation, it is said: "A gift to children does not include grandchildren." 4 Kent's Com.—14th ed.,—p. 345; Arnold v. Alden, 173 Ill. 238, 239, 240. See also O'Hare v. Johnston, 273 Ill. 476.

"Where the word 'issue' is used with reference to the parent of such issue, as where the issue is to take the shares of the deceased parent, it must mean his children,—that is, the word 'parent' confines the word 'issue' to the children of the taker. Fairchild v. Buchell, 32 Beav. 158; Sibley v. Perry, 7 Ves. Jr. 552; Mad-

ison v. Larmon, 170 Ill. 72, 73; Arnold v. Alden, 173 Ill. 229.

The word "issue" means lineal descendants, although it may appear from the context of the will or deed to have been used with the limited meaning of children, or children and grandchildren. Arnold v. Alden, 173 Ill. 229; Robeson v. Cochran, 255 Ill. 357, 358.

The word "issue," used in a will, is to be given its technical meaning unless it appears from the whole will that intention of the testator was not so to use it. Stisser v. Stisser, 235 Ill. 211.

If it is apparent from a reading of the will that the testator used the words "heirs," "issue" and "children" indiscriminately, giving them their common meaning, the court is warranted in reading them interchangeably, so as to carry out the testator's intention as disclosed by the entire instrument. Gannon v. Peterson, 193 Ill. 379.

When the words "issue," "lawful issue," "sons," "daughters" or "children" are used instead of the word "heirs," then such words are words of purchase and not of limitation, and the ancestor takes only a life estate, and the sons, daughters or children take the remainder by purchase, and for the reason that such words are the designation of persons to take originally in their own right. See Baker v. Scott, and authorities there cited, 62 Ill. 86; Schaefer et al. v. Schaefer, 141 Ill. 343.

The word "issue" was used in the sense of children where a testator devised life estates in specified tracts of real estate to each of his children and further provided by his will that after the death of such children the property should go to their children if any survived them, or in the event of the death of any of testator's children before the taking effect of the will, then to his or her or their child or children surviving, or their descendants, but should any of the children to whom the described land was given "die without issue," then such lands should be equally divided among their brothers or sisters or their descendants. Blakely v. Mansfield, 274 Ill. 133.

ISSUE OF HIS BODY.

"The words here are not, "if he die without issue' or 'without having issue,' but they are 'in case he should die without issue of his body, then the same shall go to the heirs,' etc. The supreme court of the United States has said: 'The words, issue of his body, are more flexible than the words, heirs of his body, and courts more readily interpret the former as the synonym of children, and a mere descriptio personarum, than the latter.' Daniel v. Whatrenby, 17 Wall. 639. In Carpenter v. Van Olinder, 127 Ill. 42, we construed the words, issue of their bodies, as meaning children. In Butler v. Huestis, 68 Ill. 594, it was said, that the words 'issue' and 'children,' might be construed interchangeably, in order to effectuate the intention of the testator. In Summers v. Smith, 127 Ill. 645, it was said, that every part of the will might be taken into consideration for the purpose of showing, that the words 'heirs of the body,' which are less flexible than the words 'issue of the body,' are used synonymously with 'children;' and in the Summers case it was held, that the words, 'dying without heirs of body' meant dying without leaving such heirs of body as the estate would have vested in, in fee, instantly, upon the death of the first taker,-as children," etc. Strain v. Sweeny, 163 Ill. 607.

ISSUED.

Judgments Act of 1874.

Section 1 of the Judgments Act of 1874, providing that a judgment shall cease to be a lien if execution is not "issued" thereon within a year uses the word "issued" in a comprehensive sense, requiring the execution to be made out, properly attested by the clerk and delivered to the sheriff, to be collected by him, and is not complied with by the mere writing of such an execution, which is not delivered to the sheriff, but placed by the clerk in the files, marked "not called for." Pease v. Ritchie, 132 Ill. 645.

Criminal Code.

A warehouse receipt is "issued," within the meaning of section 124 of the Criminal Code, relating to fraudulent warehouse receipts, only when the writing constituting the receipt is assigned, transferred or delivered by the owner of the building to another person. McReynolds v. People, 230 Ill. 634.

ISSUES.

Issues of fact are made up, under our practice in courts of record, by formal written pleadings of the parties. An issue, in this sense, is defined as a single, certain and material point arising out of the allegations or pleadings of the parties, and generally made by an affirmative allegation and denial. Gould's Pl. 279; Anderson's Law Dic. Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at issue: and when a material fact is thus affirmed and denied, and issue of fact is formed for trial, and its determination usually results in a judgment for one party or the other. Washington v. L. & N. Ry. Co. et al., 136 Ill. 52.

ITA TE DEUS ADJUVET.

(Lat. so help you God.) The old form of administering an oath in England, generally in connection with other words, thus: Ita te Deus adjuvet, et sacrosancta Die Evangelia, So help you God, and God's holy Evangelists. Ita te Deus adjuvet et omnes sancti, So help you God and all the saints. Willes, \$38.

IT APPEARS TO ME.

The expression ordinarily carries no other significance than "it seems to me," in the sense that it is probable or likely. Lecklieder v. Chicago, etc., R. Co., 173 Ill. App. 562.

IT IS CONSIDERED.

The language of courts in pronouncing judgment. Blatchford v. Newberry, 100 Ill. 490.

ITEM.

A separate particular of an account. Lovell v. Sny Island, etc., District, 159 Ill.

Also; likewise; in like manner; again; a second time. These are the various meanings of this Latin adverb.

It is used to introduce a new paragraph, or chapter, or division; also to denote a particular in an account. is used when any article or clause is added to a former, as if there were here a new beginning. Du Cange. Hence the rule that a clause in a will introduced by item shall not influence or be influenced by what precedes or follows, if it be sensible, taken independently (1 Salk. 239), or there is no plain intent that it should be taken in connection, in which cases it may be construed conjunctively, in the sense of "and," or "also," in such a manner as to connect sentences. If, therefore, a testator bequeath a legacy to Peter, payable out of a particular fund, or charged upon a particular estate, item, a legacy to James, James' legacy as well as Peter's will be a charge upon the same property. 1 Atk. 436; 3 Atk. 256; 1 Brown, Ch. 482; 1 Rolle, Abr. 844; 1 Mod. 100; Cro. Car. 368; Vaughan, 262; 2 Rop. Leg. 349; 1 Salk. 234.

The word "item" is in common use and well understood as a separate entry in an account or a schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries. The People, ex rel, The State Board of Agriculture v. Brady, 277 Ill. 131.

ITEMIZE.

To state in items or by particulars. Lovell v. Drainage District, 159 Ill. 196.

The estimate of the engineer required by section 7 of the Local Improvements Act is sufficiently "itemized," within the meaning of that section, if sufficiently specific to give the property owner a general idea of what it was estimated the component elements of the improvement would cost. Hulbert v. Chicago, 213 Ill. 454.

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